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UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

JEROME P. PORTER, JOHN G.
JURY, THOMAS W. CHANDLER,
CHARLES J. CARR AND MRS
MARY THOMPSON,

Appellants,

vs.

TONOPAH NORTH STAR TUN-
NEL AND DEVELOPMENT
COMPANY (A CORPORATION),

Appellee.

FILED
OCT -6 1905

TRANSCRIPT OF RECORD.

VOL. I.

(Pages 1 to 304, Inclusive.)

Upon Appeal from the United States Circuit Court
for the District of Nevada.

Records of Circuit
Court of Appeals

340

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

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*In the United States Circuit Court of Appeals, for the Ninth
Circuit.*

October Term, A. D. 1905.

JEROME P. PORTER, JOHN G.
JURY, THOMAS W. CHANDLER,
CHARLES J. CARR and Mrs.
MARY THOMPSON,

Appellants,

vs.

TONOPAHA NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY
(a Corporation),

Appellee.

No. 1241.

**Statement of Errors and Parts of Record on Which Appel-
lants will Rely.**

Following is a statement of the errors on which the appellants intend to rely, and of the parts of the record which they think necessary for the consideration thereof:

ERRORS.

1. That the Circuit Court of the United States, Ninth Circuit, District of Nevada, erred in deciding this case against the plaintiffs and in favor of the defendant.

2. That said Court erred in finding and deciding that the location monument of the Dave Lewis Hope Claim was located on the hog-back near the summit of Mount Oddie.

3. That said Court erred in finding and deciding that the location monument of the Dave Lewis Hope Claim was not situated about 300 feet north of the cut near the North Star shaft.

4. That the Court erred in finding and deciding that on October 10, 1901, the ground then located by F. M. Ish as the Ivanpah Claim was vacant public mineral lands subject to location.

5. That the said Court erred in finding and deciding that the location made by F. M. Ish as the Ivanpah Claim was a valid location.

6. That the said Court erred in finding and deciding that F. M. Ish, the locator of the Ivanpah Claim and the owners thereof, fully complied with the law in making said location and have the better right and title to the ground covered by said location.

7. That the said Court erred in finding and deciding that the locator of the Ivanpah Claim could establish by proof outside of the certificate of location all or any of the essential facts required to make a valid location.

8. That the said Court erred in finding and deciding that the proof of such facts outside of the record certificate is prima facie evidence of such other facts as are required to be stated in such certificate.

9. That the said Court erred in finding and deciding that the original notice of location can be filed and recorded as provided by law within ninety days after the date of location thereof, and can be called and considered a certificate of location.

10. That the said Court erred in finding and decid-

ing "If the locator is satisfied with his original notice he can file same within ninety days and can call it his certificate of location."

11. That the said Court erred in finding and deciding that the defendant had proved all necessary facts entitling it to a patent.

12. That the said Court erred in finding and deciding that the plaintiffs failed to establish by a preponderance of evidence the validity of the Dave Lewis Hope Claim, and that it includes a portion of the ground embraced within the boundaries of the Ivanpah location.

13. That the said Court erred in overruling the objection of the plaintiffs to and admitting in evidence the verbal testimony of the witness F. M. Ish, giving his recollection of the contents of the notice of location made by him of the Ivanpah Claim, and in permitting the following question to be answered by said witness in that regard: "Q. Can you state the contents of the notice?"

14. That the said Court erred in denying the motion of plaintiffs to strike out from the testimony of the witness John McCune the purported statements made to him by David Lewis, and in overruling the objection of the plaintiffs to any declarations made by said David Lewis, to any person out of the presence of the co-locator or of the plaintiffs in this action.

15. That the said Court erred in permitting the witness John McCune, over the objection and exception of the plaintiffs, to answer the following question, regarding the statements made to him by David Lewis con-

cerning the monuments pointed out to him by David Lewis, to wit: "Now what did Lewis say about these three monuments?"

16. That the said Court erred in permitting the witness Uri B. Curtis, over the objection and exception of plaintiffs, to answer the following questions: "State whether or not you know the general reputation of Charles J. Carr in the community in which he lived for truth, honesty and integrity, answer yes or no?" "State whether it was good or bad."

17. That the said Court erred in permitting the witness T. L. Oddie to answer the following question, over the objection and exception of plaintiffs, to wit: "Mr. Oddie, how many fires in Tonopah did you hear connected with Mr. Carr, or suspicion, talked about with reference to Mr. Carr, if any?"

18. That the said Court erred in permitting the witness W. J. Harris to testify, over the objection and exception of the plaintiffs, to his other conversation with Dave Lewis, and his examination of a purported time-book kept by said Dave Lewis, and the contents thereof.

19. That the said Court erred in permitting the witness R. B. Davis to testify to the conversations and declarations made by David Lewis over the objection and exception of the plaintiffs, in response to the following question. "Now state to the Court the substance of that trip."

20. That the said Court erred in permitting the witness R. B. Davis to produce an account-book and testify to the items of said account in answer to the following

questions, over the objection and exception of plaintiffs: "I would like you to turn in this book, upon the back of which is marked December 21, 1901, to February 28, 1902, to the accounts for the month of February. The entry in first part of February. Now commencing Feb. 2 see if there is any account with David Lewis," and admitting said account in evidence.

21. That the said Court erred in denying the motion of plaintiffs to strike out from the record the statement of the account of David Lewis with the witness R. B. Davis, as follows, to wit: "A. David Lewis by McCune. 2½ lbs. of powder, 40c; ½ box of caps, 35c; 150 ft. of fuse, 40c."

22. That the said Court erred in overruling the objection to and admitting in evidence the amended certificate of location of the Ivanpah Claim, which was admitted and read in evidence and marked Defendant's Exhibit "E."

23. That the said Court erred in finding and deciding that the plaintiffs are not, and never were, the owners, or in the possession, or entitled to the possession of any part of that certain mining claim or premises situated, lying and being in the Tonopah Mining District, Nye County, State of Nevada, designated as the Ivanpah Lode Mining Claim.

24. That the said Court erred in finding and deciding that Frank M. Ish and his grantees and successors have been in actual, peaceable, quiet, open, and notorious possession since October, 10, 1901, of the mining

claim and premises and area embraced within the boundary lines of the "Ivanpah" Mining Claim.

25. That the said Court erred in finding and deciding that the defendant is the owner (subject to the paramount title of the United States) and entitled to possession of the premises and area described in the application for patent for the said "Ivanpah" Mining Claim, and that by itself, its predecessors in interest and grantors, it has been such owner (subject to such paramount title) by virtue of the location thereof, and by virtue of compliance with the Acts of Congress and customs of the Tonopah Mining District, by said defendant, and its predecessors in interest and grantors, ever since the 10th day of October, 1901.

26. That the said Court erred in finding and deciding that the plaintiffs have no estate or interest or possession or right of possession of, in or to any part or portion of the said Ivanpah Lode Mining Claim, and that the plaintiffs' claim of any estate or interest or right as against any part or portion of the said Ivanpah Lode Mining Claim is invalid and void.

PARTS OF THE RECORD (To be Printed).

Complaint, subpoena in equity, answer of defendant, replication, opinion, decree, pages 1 to 32, inclusive.

TESTIMONY.

Pages 33 to 49, inclusive.

Page 50, lines 1 to 9, inclusive.

Page 58, lines 14 to 32 inclusive.

Page 59, entire page.

- Page 60, lines 1 to 6, inclusive.
- Page 64, lines 26 to 32, inclusive.
- Page 65, lines 1 to 5, inclusive.
- Page 68, lines 10 to 14, inclusive.
- Page 69, lines 23 to 33, inclusive.
- Page 70, lines 1 to 16, inclusive.
- Page 74, lines 30 to 31.
- Pages 75 to 78, inclusive.
- Page 79, lines 1 to 8, inclusive.
- Page 80, lines 11 to 32, inclusive.
- Pages 81 to 88, inclusive.
- Page 89, lines 1 to 26 inclusive.
- Page 98, lines 14 to 30 inclusive.
- Pages 99 to 108, inclusive.
- Page 109, lines 1 to 14 inclusive.
- Page 115, lines 23 to 32 inclusive.
- Pages 116 and 117.
- Page 118, lines 1 to 15 inclusive.
- Page 124, line 32.
- Page 125, lines 1 to 27, inclusive.
- Page 127, lines 15 to 32 inclusive.
- Page 128, lines 1 to 13, inclusive.
- Pages 129 to 131, inclusive.
- Page 132, lines 1 to 28, inclusive.
- Page 135, lines 12 to 31, inclusive.
- Pages 136 to 145, inclusive.
- Page 147, lines 1 to 27, inclusive.
- Page 149, lines 26 to 32, inclusive.
- Pages 150 to 154, inclusive.
- Page 155, lines 1 to 18, inclusive.

Page 158, lines 3 to 12 inclusive.

Page 160, lines 20 to 32 inclusive.

Page 161 to 172, inclusive.

Page 173, lines 1 to 4, inclusive.

Page 174, line 17.

Page 175, lines 26 to 32, inclusive.

Page 176, lines 1 to 6, inclusive.

Page 177, lines 6 to 10, inclusive.

Page 177, lines 19 to 31, inclusive.

Page 178, entire page.

Page 179, lines 1 to 13 inclusive, omitting "I" at end of line 13.

Page 180, beginning with "Up till the" on line 14 and ending with last word on line 20.

Page 181, lines 6 to 31, inclusive.

Page 182, line 1.

Page 183, lines 24 to 31, inclusive.

Page 184, entire page.

Page 185, lines 1 to 10, inclusive.

Page 185, lines 25 and 26.

Page 187, lines 10 to 21, inclusive.

Page 188, lines 6 to 30, inclusive.

Page 190, lines 5 to 31, inclusive.

Page 191, lines 1 and 2.

Page 191, lines 19 to 29 inclusive.

Page 192, lines 30 to 32, inclusive.

Pages 192½ to 194, inclusive.

Page 195, lines 1 to 11, inclusive.

Page 195, lines 28 to 31, inclusive.

Pages 196 to 226, inclusive.

- Page 227, lines 1 to 11, inclusive
Page 228, lines 14 to 31, inclusive.
Page 229, lines 1 to 25, inclusive.
Page 231, lines 10 to 31, inclusive.
Page 232, lines 1 to 15, inclusive.
Page 233, lines 5 to 8, inclusive.
Page 233, lines 31 and 32.
Pages 234, lines 1 to 9, inclusive.
Page 241, line 32.
Page 242, lines 1 to 9, inclusive.
Page 243, lines 9 to 28, inclusive.
Page 247, lines 12 to 32, inclusive.
Pages 248 to 252, inclusive.
Page 253, lines 1 to 13, inclusive.
Page 254, lines 7 to 32, inclusive.
Page 255, entire page.
Page 256, line 1.
Page 258, lines 5 to 7, inclusive.
Page 258, lines 25 to 32, inclusive.
Page 259, lines 1 to 18, inclusive.
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Pages 264 to 267, inclusive.
Page 268, lines 1 to 19, inclusive.
Page 269, lines 27 to 33, inclusive.
Pages 270 to 274, inclusive.
Page 275, lines 1 to 28, inclusive.
Page 280, lines 26 to 32, inclusive.
Page 281, lines 1 to 6, inclusive.

Page 281, lines 31 and 32.

Pages 282 to 286, inclusive.

Page 287, lines 1 to 6, inclusive.

Page 288, lines 4 to 33, inclusive.

Page 289, lines 1 and 2.

Page 290, lines 1 to 20, inclusive.

Page 291, lines 13 to 29, inclusive.

Page 294, lines 26 to 32, inclusive.

Page 295, entire page.

Page 296, lines 1 and 2.

Page 296, lines 19 to 30, inclusive.

Pages 297 to 308, inclusive.

Page 309, lines 1 to 28, inclusive.

Pages 310, lines 5 to 32, inclusive.

Pages 311 to 324, inclusive.

Page 325, lines 1 to 23 inclusive.

Page 327, lines 2 to 30, inclusive.

Page 328, lines 1 to 12, inclusive.

EXHIBITS.

Plaintiffs' 7, pages 329 to 346, inclusive, and plat.

Plaintiffs' 10, page 354, lines 18 to 32, inclusive.

Plaintiffs' 10, pages 355 and 356.

Plaintiffs' 12, pages 360 to 362, inclusive.

Defendants' "E," pages 367 to 369, inclusive.

Defendants' "F," pages 370 to 375, inclusive.

Defendants' "H," page 380, lines 1 to 26, inclusive.

Defendants' "H," page 383, lines 12 to 31 inclusive.

Defendant's "H," pages 384 and 385.

Orders enlarging time for filing, pages 397 to 398.

EXHIBITS.

Plaintiffs' 14, page 399.

Plaintiffs' 17, pages 400 and 401.

Appeal, pages 402 and 403.

Appeal bond, pages 404 and 405.

Assignments of error, pages 406 to 411, inclusive.

Certification of clerk, page 412.

Citation with admission of service on back, etc., page 413.

Photograph of ground in controversy. (Plaintiffs' Exhibit 3.)

Photograph of cut. (Plaintiffs' Exhibit 5.)

The foregoing nine pages and this page contain the errors on which the appellants intend to rely, and a statement of the parts or portions of the record which they deem essential for the proper consideration thereof. In addition to several exhibits specifically named on pages 9 and 10 hereof, the following exhibits are embraced in the pages of testimony hereinbefore enumerated:

Plaintiffs' 1, 2, 4, 6, 15.

Defendant's "B."

Plaintiffs' exhibit 16 forms part of Exhibit 7.

The following exhibits have been omitted by the appellants:

Plaintiffs' 8, 9, 11, 13.

Defendant's "A," "C," "D," "G," "I," "J," and part of "H."

Dated at San Francisco, California, this thirteenth day of September, 1905.

WELLES WHITMORE,
GAROUTTE & GOODWIN,
Attorneys for Appellants.

[Endorsed]: No. 1241. United States Circuit Court of Appeals, Ninth Circuit. Jerome P. Porter, et al., Appellants, v. Tonopah North Star Tunnel and Development Company, a Corporation, Appellee. Statement of Errors and Parts of Record on which Appellants Rely. Copy of within received reserving rights to all exceptions, Sep. 14, 1905. Campbell, Matson & Campbell, Key Pittman, Attorney for Appellee. Garoutte & Goodwin, Welles Whitmore, Attorneys for Appellants. Filed September, 14, 1905. F. D. Monckton, Clerk.

*In the United States Circuit Court of Appeals, for the Ninth
Circuit.*

October Term, A. D. 1905.

JEROME P. PORTER, JOHN G. JURY, THOMAS W. CHANDLER, CHARLES J. CARR and Mrs. MARY THOMPSON,	}	No. 1241.
Appellants,		
vs.		
TONOPAH NORTH STAR TUNNEL AND DEVELOPING COMPANY (a Corporation),	}	
Appellees.		

Appellees' Designation of Record to be Printed.

Counsel for appellees hereby designate that all parts of the record omitted by counsel for appellants in their statement of errors and parts of the record on which appellants rely, be printed, that is to say, they require that the entire record in the above-entitled action on file in the office of the clerk of the United States Circuit Court of Appeals be printed.

CAMPBELL, METSON & CAMPBELL,
KEY PITTMAN,
K. M. JACKSON,

Attorneys for Appellees.

[Endorsed]: No. 1241. United States Circuit Court of Appeals, Ninth Circuit. Jerome P. Porter et al., Ap-

pellants, vs. Tonopah North Star Tunnel and Development Co., Appellees. Appellees' Designation of Record to be Printed. Due service of within designation of record to be printed, admitted this 20th day of September, 1905. Garoutte & Goodwin, Welles Whitmore, Attorneys for Appellant. Filed Sep. 20, 1905. F. D. Monckton, Clerk.

*In the Circuit Court of the United States, Ninth Circuit, in
and for the District of Nevada.*

JEROME P. PORTER, JOHN G.
JURY, THOS. W. CHANDLER,
CHARLES J. CARR and Mrs.
MARY THOMPSON,

Plaintiffs,

vs.

TONOPAH NORTH STAR TUNNEL
AND DEVELOPING COMPANY (a
Corporation),

Defendant.

Bill of Complaint.

To the Honorable, the Judges of the Circuit Court of
the United States, Ninth Circuit, in and for the
District of Nevada:

Jerome P. Porter, John G. Jury, Thos. W. Chandler,
Charles J. Carr and Mrs. Mary Thompson, bring this,
their bill of complaint against the defendant above
named, Tonopah North Star Tunnel and Development

Company, a corporation of the State of Nevada, and thereupon your orators complain and allege:

That your orators, each and all, are citizens of and residents within the State of California.

That the defendant above named, Tonopah North Star Tunnel and Development Company, is a corporation organized and existing under the laws of the State of Nevada, and is a citizen of and resident within the State of Nevada, and a nonresident of the State of California, where your orators reside.

That on the 26th day of August, 1901, your orators and their predecessors in interest were and ever since the said 26th day of August, 1901, your orators and their predecessors in interest, have been and your orators now are the owners (subject only to the paramount title of the United States) and in the possession and entitled to the possession of that certain mining claim containing a lode of rock in place bearing gold, silver and other valuable minerals situate in the Tonopah Mining District, Nye County, State of Nevada, called the "Dave Lewis Hope" or "Mizpah Intersection" mining claim, and more particularly described as follows:

Commencing at apex of hill at post in monument, being the discovery monument, and running north 8° west, five hundred feet to center end post marked north end center Mizpah Intersection; thence three hundred feet west 8° south to the northwest corner post, marked northwest corner Mizpah Intersection; thence seven hundred and fifty feet south 8° east to the west center side line post marked west center side line Mizpah In

tersection; thence seven hundred and fifty feet south 8° east to southwest corner marked SW. corner Mizpah Intersection; thence three hundred feet east 8° north to south center end post marked south center end line Mizpah Intersection; thence three hundred feet east 8° north to southeast corner post marked SE. corner post Mizpah Intersection; thence seven hundred and fifty feet north 8° west to east center side line marked E. center side line Mizpah Intersection; thence seven hundred and fifty feet north 8° west to northeast corner post marked NE. corner post Mizpah Intersection; thence three hundred feet west 8° south to north center end post marked north center end post Mizpah Intersection, closing.

Your orators further allege that the defendant above named claiming to be the owner of an alleged adjacent mining claim, called the "Ivanpah Lode," on or about the 20th day of August, 1902, wrongfully and unlawfully caused said alleged "Ivanpah Lode" mining claim to be so surveyed as to cross upon and overlap the said Dave Lewis Hope or Mizpah Intersection claim or lode, and include a portion thereof described as follows: Beginning at the said post marked N. end center of the said Dave Lewis Hope (or Mizpah Intersection) mining claim, and running thence S. 82° W. 242 feet to a point at the intersection of the north boundary of the said Dave Lewis Hope (or Mizpah Intersection) claim with the west boundary of the said Ivanpah Lode claim; thence S. $3^{\circ} 24'$ E. 760 feet to the said post marked W. center side line of the said Dave Lewis Hope (or Mizpah Intersec-

tion) mining claim; thence S. 8° E. 440 feet to the intersection of the west boundary of the Dave Lewis Hope (or Mizpah Intersection) claim with the south boundary of the Ivanpah Lode claim; thence N. $86^{\circ} 39'$ E. 560 feet to corner No. 3 of the said Ivanpah Lode claim; thence N. $3^{\circ} 24'$ W. 490 feet to the post marked E. center side line of the Dave Lewis Hope (or Mizpah Intersection) claim; thence north 8° W. 750 feet to the post marked NE. corner of the Dave Lewis Hope (or Mizpah Intersection) claim; thence S. 82° W. 300 feet to the place of beginning and containing approximately 9.92 acres of ground.

That thereafter, and on or about the 19th day of September, 1903, the said defendant filed the field-notes and a diagram of said survey of the said alleged Ivanpah Mining Claim and also an application for a United States patent for said alleged mining claim in the United States Land Office at Carson City, Nevada, and on, to wit the 19th day of September 1903 caused the Register of said land office to give notice of said application for a patent by publication as required by law. That in and by said application for patent the said defendant wrongfully and unlawfully set up and alleged that it was and is the owner and in possession of the whole of the said alleged Ivanpah mining claim inclusive of the premises last above described and the lode therein, part of the said Dave Lewis Hope (or Mizpah Intersection) mining claim and lode, and the property of your orators.

That your orators, during the sixty days period of

publication for patent for said alleged Ivanpah mining claim, to wit, on the 17th day of November, 1903, filed in said land office under oath a protest and adverse claim to said application in due form, and showing the nature, extent and boundaries of the adverse claim of your orators, and thereupon proceedings on said application in said land office, were and are stayed to await the determination, by a court of competent jurisdiction of the right of possession to said last above-described premises and the right of the respective parties therein and thereto, and to that end your orators bring this suit, the period of thirty days not having elapsed since the filing of said protest and adverse claim.

That the said defendant maintains and prosecutes said application for patent for the said alleged Ivanpah Mining Claim, and thereby the title and possession of your orators in and to the said last above-described premises, being the area thus brought in conflict between the said Dave Lewis Hope (or Mizpah Intersection) Mining Claim and the said alleged Ivanpah Mining Claim, are wrongfully and unlawfully impeached, clouded and encumbered, and the value of your orators' estate and property therein greatly depreciated to your orators' great and irreparable damage.

That the claim of the said defendant made as aforesaid is without any right whatsoever, and that it has no estate, right, possession, right of possession or interest in said conflict area, or any part or parcel thereof.

And your orators further show that said mining claim and premises in controversy in this action and the said

area in conflict, as aforesaid, being the premises last above described, and the lode therein are of great value, to wit of the value of more than \$10,000.00.

In consideration whereof, and inasmuch as your orators can have no adequate relief except in this court, and to the end therefore that the said defendant may, if it can, show why your orators should not have the relief prayed, and make a full disclosure and discovery of all the matters aforesaid, and according to the best and utmost of its remembrance, knowledge, information and belief, full, true, direct and perfect answer make to the matters hereinbefore stated and charged, but not under oath, an answer under oath being expressly waived.

And your orators pray that your Honors may decree that said defendant has no estate, interest, possession, or right of possession, in or to said area in conflict between the said Dave Lewis Hope (or Mizpah Intersection) and the said alleged Ivanpah mining claim, and the lode therein, and that your orators be decreed to be the owners (subject only to the paramount title of the United States), and lawfully in and entitled to the possession of the said last above-described premises, being said area in conflict, as aforesaid, and the lode therein, and that your orators' title therein and thereto and possession thereof be quieted and confirmed as against said defendant and all persons claiming by, through or under it, and that said defendant has not, and never had, any estate, possession, right of possession, title or interest whatever of, in or to said area in

conflict, as aforesaid, or the lode therein, or any part or parcel thereof.

That said defendant and its agents, officers, servants and employees, pending this suit and upon the trial, be perpetually restrained and enjoined from entering in or on said conflict area, or the lode therein, or any part thereof, or mining in or extracting any ores or minerals therefrom, and from in any way interfering with the possession thereof. And that your orators have such other and proper relief, including costs as may seem to your Honors meet and agreeable to equity.

May it please your Honors to grant unto your orators a writ of subpoena of the United States of America, directed to the said defendant Tonopah North Star Tunnel and Development Company, a corporation, commanding it, on a day certain to appear and answer unto this bill of complaint, and to abide and perform such order and decree in the premises as to the Court shall seem proper and required by the principles of equity and good conscience.

GAROUTTE & GOODWIN,
Solicitors for Plaintiff.

State of California,

City and County of San Francisco,—ss.

Charles J. Carr, being first duly sworn, upon his oath deposes and says, that he is one of the plaintiffs above named; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein

stated upon information or belief, and as to those matters he believes it to be true.

CHARLES J. CARR.

Subscribed and sworn to before me this 11th day of December, 1903.

[Seal]

J. J. KERRIGAN,

Notary Public in and for the City and County of San Francisco.

[Endorsed]: No. 771. In the Circuit Court of the United States, Ninth Circuit, in and for the District of Nevada. Jerome P. Porter, et al., Plaintiffs, vs. Tonopah North Star Tunnel and Development Company, a Corporation, Defendant. Bill of Complaint. Filed December 15th, 1903, T. J. Edwards, Clerk. By H. D. Edwards, Deputy. Garoutte & Goodwin, Attorneys at Law. Mutual Savings Bank Building, 708 Market St., San Francisco. Telephone, Bush 762.

Subpoena in Equity.

The President of the United States of America, to Tonopah North Star Tunnel and Development Company, a Corporation, Greeting:

You are hereby commanded that you personally appear before the Judges of the Circuit Court of the United States for the District of Nevada, in the Ninth Judicial Circuit, on the 1st day of February, 1904, to answer unto a bill of complaint exhibited against you, in said court, by Jerome P. Porter, John G. Jury, Thos. W.

Chandler, Charles J. Carr and Mrs. Mary Thompson, plaintiffs, and to do further and receive whatever said Court shall have considered in that behalf; and this you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, and the seal of said Circuit Court hereto affixed, at Carson City, Nevada, this 15th day of December, 1903.

[Seal]

T. J. EDWARDS,

Clerk.

GAROUTTE & GOODWIN,

Solicitors for Plaintiff.

MEMORANDUM.

The said defendant is to enter its appearance in the suit above mentioned, in the clerk's office at Carson City, Nevada, on or before the day at which the above subpoena is returnable, otherwise the bill may be taken pro confesso.

T. J. EDWARDS,

Clerk U. S. Circuit Court, District of Nevada.

RETURN.

In the Circuit Court of the United States, Ninth Circuit,
District of Nevada.

JEROME P. PORTER et al.,

Plaintiffs,

vs.

TONOPAH NORTH STAR TUNNEL
AND DEVELOPMENT CO. a (Cor-
poration),

Defendant.

No. 771.

I hereby certify and return that I received the within and hereto annexed subpoena in equity on the 16th day of December, 1903, and served the same upon W. J. Harris, secretary of the North Star Tunnel and Development Company, a corporation, at Reno, Nevada, on the 16th day of December, 1903, by showing him the original subpoena in equity, and delivering to him a copy thereof, together with a certified copy of the complaint, duly certified by the clerk of the U. S. Circuit Court at Carson City, Nevada, to be a full, true and correct copy of the original complaint on file and of record in his office in the above-entitled case.

J. F. EMMITT,

U. S. Marshal.

By L. Stern,

Deputy.

MARSHAL'S FEES AND EXPENSES.

Mileage—31 mi. at 12 cts.....\$3.72

1 service 4.00

—————
\$7.72

[Endorsed]: No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. v. Tonopah North Star Tunnel and Development Company, a Corporation. Subpoena in Equity. Filed on Return, December 28, 1903. T. J. Edwards, Clerk. By H. D. Edwards, Deputy.

*In the Circuit Court of the United States, Ninth Circuit,
in and for the District of Nevada.*

JEROME P. PORTER, JOHN G. JURY,
THOS. W. CHANDLER, CHARLES
J. CARR and Mrs. MARY THOMP-
SON,

Plaintiffs,

vs.

TONOPAH NORTH STAR TUNNEL
AND DEVELOPMENT CO. (a Cor-
poration),

Defendant.

**Answer of Tonopah North Star Tunnel and Development
Company.**

Answer of Tonopah North Star Tunnel and Development Company, a corporation, defendant herein, to bill of complaint of Jerome P. Porter, John G. Jury, Thos. W. Chandler, Charles J. Carr and Mrs. Mary Thompson, complainants.

The above-named defendant now and at all times hereafter saving to itself all and all manner of benefit of exceptions, or otherwise, that can or may be had or taken

to the many errors, uncertainties and imperfections in said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering says:

That this defendant has not sufficient knowledge or information upon which to base a belief as to whether said plaintiffs are citizens of or residents within, or any of them is a citizen of or resident within the State of California, and basing its denial upon that ground, this defendant denies that said plaintiffs are citizens of or residents within or any of them is a citizen of or resident within the State of California.

Further answering said bill of complaint, defendant denies that on the 26th day of August, 1901, or at any other time, said plaintiffs or their predecessors in interest were, or any of them was, or that ever since the 26th day of August, 1901, or at any other time, said plaintiffs have been or now are the owners of or any of them has been or now is the owner of or in the possession of or entitled to the possession of that certain alleged mining claim described in said bill of complaint, called the "Dave Lewis Hope" or "Mizpah Intersection" Mining Claim, or any part thereof, subject only to the paramount title of the United States, or otherwise or at all.

Further answering said bill of complaint, defendant denies that claiming to be the owner of an alleged adjacent mining claim called the "Ivanpah Lode" Mining Claim, or otherwise, on or about the 20th day of August, 1902, or ever or at all, wrongfully, or unlawfully, or

otherwise, it caused said "Ivanpah Lode" Mining Claim to be surveyed so as to cross upon or overlap the said alleged "Dave Lewis Hope" or "Mizpah Intersection" claim or lode mentioned in said bill of complaint, or to include the portion thereof described in said bill of complaint, or any other portion thereof whatsoever; and in this behalf defendant alleges that the survey of said "Ivanpah" Mining Claim, mentioned in said bill of complaint was rightfully, lawfully and correctly made and included no part or portion of said alleged "Dave Lewis Hope" or "Mizpah Intersection" Mining Claim.

Further answering said bill of complaint, defendant admits that the said defendant filed field-notes and diagram of said survey of the said "Ivanpah" mining claim, and also an application for a United States patent for said mining claim last mentioned, in the United States Land Office at Carson City, Nevada, and caused the Register of said land office to give notice of said application for a patent by publication as required by law; but denies that such filing was had or such notice was given on the 19th day of September, 1903, and alleges that such filing was had and such notice was given on the 14th day of September, 1903.

Further answering said bill of complaint, defendant denies that in or by said application for patent or otherwise or ever or at all the said defendant wrongfully or unlawfully, set up or alleged that it was or is the owner of or in the possession of the whole or any part of the said "Ivanpah" mining claim; denies that the said application included the "Dave Lewis Hope" or "Mizpah

Intersection" mining claim, described in said bill of complaint, or the lode therein, or any part of either thereof and denies that any part of the "Ivanpah" mining claim is a part of the said alleged "Dave Lewis Hope" or "Mizpah Intersection" mining claim, or lode, or is the property of or in the possession of said plaintiffs; and in this behalf defendant alleges that at all the times herein mentioned it was and is the owner and in possession of the whole of said "Ivanpah" mining claim.

Further answering said complaint, defendant denies that during the sixty days period of publication for patent for said "Ivanpah" mining claim, to wit, on the 17th day of November, 1903, or at all, plaintiffs or any of them filed in said land office under oath, or otherwise, a protest and adverse claim, or protest or adverse claim to said application, in due form, or as prescribed by law, or at all, and in this behalf defendant alleges that the plaintiffs did not nor did any of them, on the 17th day of November, 1903, or at any other time or at all, file or cause to be filed, at the said land office, any plat or diagram of survey of the said alleged "Dave Lewis Hope" or "Mizpah Intersection" mining claim, showing the nature, extent or boundaries of said alleged adverse claim of plaintiffs or any of them as prescribed by law.

Further answering said bill of complaint, defendant denies that by said application the title and possession, or title or possession of said plaintiffs, or any of them, in or to the said alleged "Dave Lewis Hope" or "Mizpah Intersection" mining claim described in said bill of com-

plaint, or in or to any part thereof, or in or to the area or any part thereof thus or otherwise brought in alleged conflict between the said alleged "Dave Lewis Hope" or "Mizpah Intersection" mining claim and the said "Ivanpah" mining claim, are or is wrongfully or unlawfully or otherwise impeached, clouded or encumbered, or that the value of the alleged estate or property of said plaintiffs or any of them therein has greatly or at all depreciated, or that said plaintiffs or any of them have sustained great or irreparable or any damage.

Further answering said bill of complaint, defendant denies that the claim of the said defendant is without any right whatsoever, or that it has no estate, right, possession, or right of possession, or interest in said alleged conflict area, or any part or parcel thereof, but, on the contrary, defendant alleges that the said mining claim, to wit, the "Ivanpah" mining claim, as described in its said application for a patent therefor, and the whole thereof, is the exclusive property of said defendant (subject only to the paramount title of the United States), and has been the exclusive property (subject only to such paramount title) of said defendant and its predecessors in interest and grantors, ever since the 10th day of October, 1901, and that the alleged claim of the said plaintiffs made in their said bill of complaint to that portion thereof described in said bill of complaint, is without any right whatsoever; and that neither said plaintiffs, nor any of them had or have any estate, right, title, interest or possession, in or to said

“Ivanpah” mining claim or in or to any part or parcel thereof.

And for further answer and defense to this action and to said bill of complaint, defendant alleges that on the 10th day of October, 1901, and at all times prior thereto, the mining claim and premises and the area now embraced within the boundary lines of the “Ivanpah” mining claim, as described in defendant’s application for a patent mentioned in said bill of complaint, were vacant and unoccupied mineral lands of the United States of America; that on the date last aforesaid, one Frank M. Ish, a citizen of said United States, discovered a ledge, or lode of gold and silver bearing quartz or other rock in place, within the present boundaries of the said “Ivanpah” mining claim, as described in said application for patent, located the same and distinctly marked on the ground the said boundaries, so that said boundaries could be readily traced, and then and there entered into possession of said “Ivanpah” mining claim and premises, and that said Ish and his grantees and successors ever since the date last aforesaid have been and now are in the actual, peaceable, quiet, open and notorious possession of said “Ivanpah” mining claim, holding and claiming the same and the whole thereof in their own right (subject only to such paramount title) and adversely to all persons whomsoever.

And for a further answer and defense to this action, said defendant alleges that said locator of said “Ivanpah” mining claim and his grantees and successors in interest since the 10th day of October, 1901, in all re-

spects have held, possessed and worked said mining claim according to and in all respects have complied with the provisions of title thirty-two, chapter six of the Revised Statutes of the United States, and of the Acts of Congress amendatory thereof, or supplemental thereto, and of the Act of the legislature of the State of Nevada entitled "An act relating to the location, relocation, manner of recording lode and placer claims, mill-sites tunnel rights, amount of work necessary to hold possession of mining claim, and the rights of co-owners therein," approved March 16, 1897, and of the acts of the legislature of the State of Nevada amendatory thereof and supplemental thereto and in all respects have complied with the laws, regulations, rules and customs of miners in force in the Tonapah Mining District where said claim is located.

Defendant further alleges that it is now the owner (subject to such paramount title), in the possession, and entitled to the possession of the "Ivanpah" mining claim, as described in said application for a patent, and that by itself, its predecessors in interest and grantors, has been such owner (subject to such paramount title) and has been so in the possession of and so entitled to the possession of the whole thereof, ever since the 10th day of October, 1901, and that it holds and owns the same (subject to such paramount title) by virtue of the location thereof, made as aforesaid and by various mesne conveyances made to it by said locator and his grantees and successors in interest; and by virtue of the said acts of Congress, the said statute of the State of Ne-

vada, and said rules, laws and customs of said mining district and by virtue of a full compliance thereof and therewith, by this defendant and its predecessors in interest and grantors ever since the 10th day of October, 1901.

This defendant further alleges that neither said plaintiffs nor any of them, have any right, title, claim or interest whatsoever in or to said "Ivanpah" mining claim, or any part thereof.

And this defendant denies all and all manner of right, title or interest claimed by said plaintiffs, or any of them, in said bill of complaint to any part of said "Ivanpah" claim.

And this defendant denies all and all manner of unlawful combinations or unlawful acts wherewith it is by said bill charged; with this, if there is any other matter, cause or thing in said plaintiff's said bill of complaint contained, material or necessary for this defendant to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays the decree of this court that said plaintiffs are not the owners of or entitled to the possession of any portion of said "Ivanpah" mining claim, and said plaintiffs have no estate, interest, possession or right of possession in or to said area in alleged conflict, between the said "Dave Lewis Hope" or "Mizpah

Intersection" Mining Claim and the "Ivanpah" Mining Claim, or the lode therein; and that defendant be decreed to be the owner and lawfully in and entitled to the possession of the whole of said "Ivanpah" Mining Claim; and that said plaintiffs have not and never had any estate, possession, right of possession, title, or interest whatever of, in or to said "Ivanpah" Mining Claim, or any of the lodes therein, or of, in or to said area in alleged conflict or the lode or lodes therein, or any part or parcel thereof; and defendant humbly prays to be hence dismissed with reasonable costs and charges in this behalf most wrongfully sustained.

TONOPAH NORTH STAR TUNNEL AND DEVELOPMENT CO. (a Corporation), Defendant.

By H. RAMSEY,
Its Vice-President.

K. M. JACKSON,
KEY PITTMAN,
CAMPBELL, METSON & CAMPBELL,
Solicitors for Defendant.

I hereby certify that in my opinion the foregoing answer is well founded in point of law.

W. H. METSON.

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

H. Ramsey, being first duly sworn, deposes and says: That he is the vice-president of the corporation defendant in the above-entitled cause; that he has heard

the foregoing answer read and knows the contents thereof; that the same is true of his own knowledge except as to the matter therein stated on information and belief and that as to those matters he believes it to be true.

H. RAMSEY.

Subscribed and sworn to before me this 12th day of February, 1904.

[Seal]

A. J. HENRY,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: No. 771. United States Circuit Court, Ninth Circuit, District of Nevada. Jerome P. Porter, et al., Plaintiffs, vs. Tonapah North Star Development Co. a Corporation), Defendant. Answer. Due Service of Within Answer Admitted this 12th day of February, 1904, Garoutte & Goodwin, Attorneys for Plaintiff. Filed February 15th, 1904. T. J. Edwards, Clerk. Campbell, Metson & Campbell, Attorneys for Defendant. Rooms 115, 116, 117, 118, 119, 120, 121, 122, Crocker Building, San Francisco, Cal.

*In the Circuit Court of the United States, Ninth Circuit, in
and for the District of Nevada.*

JEROME P. PORTER, JOHN G.
JURY, THOS. W. CHANDLER,
CHARLES J. CARR and Mrs.
MARY THOMPSON,

Plaintiffs.

vs.

TONAPAH NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY
(a Corporation),

Defendant.

Replication.

These replicants, Jerome P. Porter, John G. Jury, Thos. W. Chandler, Charles J. Carr, and Mrs. Mary Thompson, reserving to themselves all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, Tonapah North Star Tunnel and Development Company, a corporation, for replication thereunto saith that they do and think, aver, maintain, and prove their said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by these replicants without that, that any other matter or thing in the said answer

contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things these replicants are ready to aver, maintain and prove as this Honorable Court shall direct and humbly pray as in and by their said bill they have already prayed.

GAROUTTE & GOODWIN,
Solicitors for Complainants.

Service is hereby admitted March 4th, 1904.

CAMPBELL, METSON & CAMPBELL,
Attorneys for Defendant.

[Endorsed]: No. 771. In the Circuit Court of the United States, Ninth Circuit, in and for the District of Nevada. Jerome P. Porter et al., Plaintiffs, vs. Tonopah North Star Tunnel and Development Company (a Corporation), Defendant. Replication. Filed March 17th, 1904. T. J. Edwards, Clerk.

In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

JEROME P. PORTER, JOHN G.
JURY, THOS. W. CHANDLER,
CHARLES J. CARR, and Mrs.
MARY THOMPSON,

Complainants.

vs.

No. 771.

TONAPAH NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY
(a Corporation),

Defendant.

Opinion:

GAROUTTE & GOODWIN, for Complainants.

CAMPBELL, METSON & CAMPBELL and KEY
PITTMAN, for Defendant.

HAWLEY, District Judge (Orally).

This is a suit or proceeding brought in support of an adverse claim and protest filed by the complainants in the United States Land Office at Carson City, Nevada, against the application of the defendant for a patent to certain mining ground situated in Tonapah, Nye County, Nevada, to determine which of the parties has the better right to the mining ground in controversy. The right and interest of the complainants to the land is based upon a location of a mining claim known as the "Dave Lewis Hope," and the amended certificate of location of said claim un-

der the name of the "Mizpah Intersection"; and the right and interest of the defendant to the ground is based upon a location of a mining claim known as the "Ivanpah." The Dave Lewis Hope Claim was located August 26, 1901, by Dave R. Lewis and Charles J. Carr. The notice of location reads as follows: "Location Notice Dave Lewis Hope. Notice is hereby given that the undersigned has this day located fifteen hundred linear feet on this vein or lode, supposed to run in a northwest and south E. direction with three hundred feet on each side of the vein. Commencing at this monument and running one thousand feet in a southeasterly direction, and five hundred feet in a northwesterly direction. This mine is situated in the hill or mountain east of the group of mines known as the Tonopah mines owned by J. Butler and Co. This mine shall be known as the Dave Lewis Hope. Situated in Tonopah Mining District, Nye Co., Nevada. Dated Aug. 26, 1901. Locators. Dave R. Lewis, Chas. J. Carr." This notice was recorded in the County Recorder's office September 2, 1901.

The amended and additional certificate of location of the Dave Lewis Hope, under the name of the "Mizpah Intersection" was made May 17, 1902, by Jerome P. Porter, and reads as follows: "Additional and Amended Certificate of Location. Know all men by these presents that the undersigned Jerome P. Porter, a citizen of the United States, has this 17th day of May, 1902, amended, located and claimed, and by these presents does amend, locate and claim by the rights of the original discovery, and the loca-

tion heretofore made such deeds, transfers or conveyances as may have been made, and this amended certificate made, filed and recorded as provided by Federal law and by the laws of the State of Nevada now in force, and local customs and rules fifteen hundred linear feet; on this lode, vein, ledge or deposit, bearing gold, silver lead, copper and other valuable minerals, with all its dips, angles, and variations as allowed by law, together with three hundred feet on each side of the middle of said vein at the surface and all veins, lodes, ledges or deposits, and surface ground within the lines of said claim. This said lode was originally located by D. R. Lewis and Chas. J. Carr on the 26th day of August, 1901, and named the Dave Lewis Hope, by which name it is found of record in Book E of Mining Locations pages 123 and 124, Nye County, Nevada Records. It is also found in Book B, page 119, Records of Tonopah Mining District, said County and State. The name of this lode in future will be the Mizpah Intersection, the date of this amended location is made the 17th day of May, 1902. The name of the amending locator is Jerome P. Porter. From the discovery point at the discovery monument there is claimed by me one thousand feet in a southeasterly direction and five hundred feet in a northwesterly direction, along the course of said lode or vein. The general course of this vein is north 8° west by south 8° east. The discovery shaft or its equivalent is situated upon the claim eight hundred feet south from the north end center and exposes the ledge at a depth of fully ten feet; its dimensions are 5 by 8 by 10 feet deep. This further additional and amended certificate of location is made

and filed without waiver of any previously acquired and existing rights in and to said mining claim, but for the purpose of correcting any errors or omissions in the original location, or location certificate, description or record; and for the purpose of securing the benefits of the Act of the Legislature of the State of Nevada. Approved March 16th, 1897, and the amendments thereto, and of conforming to the requirements of law. The amending locator hereto is the original locator or lawful grantee deriving title and right of possession from them by deed of conveyance. (Then follows a description of the location by metes and bounds.) Locator. Jerome P. Porter.”

In this amended notice there are several interlineations and changes, and there was more or less controversy as to who made the same. This is especially true as to the erasure of the word “shaft” and substitution of the word “monument.”

There was also another amended and additional certificate of location in pencil, and with more or less interlineations, that was left by Dr. Porter with the recorder. The notices, however, are substantially the same.

The notice of location of the “Ivanpah” by F. M. Ish, of date October 10, 1901, is as follows:

“Certificate of Location. State of Nevada, Nye Co. Know all men by these presents that I, F. M. Ish, have this 10 day of Oct., 1901, located 1500 ft. linear ft. on the Ivanpah lode or vein or deposit, together with 300 ft. on each side of the middle of the vein 700 ft. running southerly and 800 ft. northerly from center of discovery monument. Situated Tonopah Mining District, Nye Co., State

of Nevada, to wit, the south end of this claim adjoins the north side line of the Mizpah mine and crosses a portion of the east end of the Lucky Jim—is situated on the west and northwest slope of the high hill northeast of the town of Tonopah, known as the Oddie Peak.”

This notice was recorded in the office of the District Recorder, and in the office of the County Recorder January 8, 1902. There was but one location notice. As posted on the ground it was called “Notice of Location,” and when recorded it was called “Certificate of Location.”

It will be observed that the Davis Lewis Hope mining claim was prior in point of time to the other claims, and if it included any portion of the ground within the Ivanpah location, and if the law was complied with by the owners of the Dave Lewis Hope as to the work and labor to be done thereon, then it would necessarily follow that a decree should be rendered in favor of complainants. Because “mining claims are not open to relocation until the rights of a former locator have come to an end.” Two locations cannot legally occupy the same space at the same time. However regular in form a junior location might be, it is of no effect as against the rights conferred upon the prior locator so long as the prior location is subsisting.

These principles were announced by the Supreme Court in *Belk vs. Meagher*, 104 U. S. 279, 284, in 1881, and repeated in numerous decisions, including *Del Monte M. Co. vs. Last Chance M. Co.*, 171 U. S. 55, 79, decided in 1897, and have always been followed by the national courts, and are too well settled to require discussion.

The testimony on behalf of the complainants as to the place where the discovery monument of the Dave Lewis Hope was erected, and as to where the notice was posted, taking the directions and distances mentioned in the notice, would so locate the land as to include a portion of the ground embraced in the Ivanpah location. On the other hand, under the testimony of the defendants, the discovery monument with the notice thereon of the Dave Lewis Hope, would locate the ground entirely without the premises covered by the Ivanpah location and would not include the cut claimed to have been made by the locators of the Dave Lewis Hope.

Upon these points, as well as others, the testimony is more or less conflicting, and, in many respects, unsatisfactory. There is more or less uncertainty in the testimony upon all the controlling questions of fact involved in this case.

With reference to the location of the claim and discovery monument on the Dave Lewis Hope, Carr testified that he and Lewis put up nine stakes and monuments on the different lines and courses of the claim, giving the distances and directions, and that the first one that he built was "about 45 or 50 feet" north of "the present shaft where the North Star tunnel is worked"; that this stake "was placed in rocks, and a 3 by 4 scantling in it." This was his starting point. "Our location work was here. * * * I put one notice the first day from the location ground on the vein." At all the corners he placed notices in cans "describing what corners and what directions they were in."

Caper, at Carr's request, in the month of October, 1901, went up on Oddie mountain and stayed there about one hour. He testified that he knew where the North Star hoisting works are now, "but I have never been up there. Q. Where did you go with Mr. Carr on that ground with reference to that shaft, or those hoisting works? A. Well, I don't know exactly, it is close there, somewhere on the side of the hill. * * * Q. What did you see there? A. I see they had a cut there. * * * Q. Describe that cut to the Court. A. There was a cut I think about 15 feet long, and the face was about 10 feet. * * * Q. How wide was it? A. About 4 to 4½ feet. * * * Q. Did you see any monument or stake around there anywhere? A. I see the monument a few feet above his cut up there. * * * Q. How close to the cut? A. Three or four feet, somewhere there. Q. Was there any notice there at that monument? A. He had some paper out of the can, and he read it; I was on the cut at that time, and when I went in there I see his name and Lewis, on the paper."

As to the work done upon the claim, Carr testified that about eight, ten or twelve days after they had put up their monuments, they commenced work right alongside of the location. "We made a cut of three lengths of the shovel, the shovel measures five feet, and that made fifteen feet, and from 4½ to 5 feet wide. Q. How deep was that cut at the face? * * * With reference to your height? A. Well, it was a little over my reach. * * * State to the Court when this work that you have described was completed. * * * A. I guess we were about from

thirty-five to forty days doing it. * * * Thirty-five or thirty-eight or forty days, something like that; long before the required time, anyhow. We had ninety days.

Dr. Porter testified that he first went to Tonopah in the month of November, 1901; that he saw a cut near the present North Star shaft, but paid no particular attention to it at that time; that in the latter part of April, 1902, he went upon the ground with Dave Lewis, and the cut "was still there;" that about the middle of May, having previously obtained a bond on the claim, he enlarged the cut. "The cut then was $4\frac{1}{2}$ feet wide, and I enlarged it to about 14 feet wide, and cut a large adit in the hill. * * * Sunk a prospecting shaft 5 by 8 in the clear" on the vein which was exposed by the cut. In all, he performed over one hundred dollars' worth of work on the cut. He also testified that he had, and introduced a photograph showing the cut as it existed prior to his doing any work thereon; and also another photograph taken after he finished his work. He then testified as to what steps were taken by him on May 17, 1902. On his cross-examination, in describing the posts and monuments, he was asked, "Q. Did you see any location monument there? A. No, sir. Q. All that you saw then were eight monuments? A. Yes." He then described the monuments as they appeared to him in April, 1902, when he went back there. At another time, when testifying about the attachment papers: "Q. I am asking you about point No. 1 on the Carr diagram. Was there a monument at that point on the Dave Lewis Hope Claim? A. I did not see one there."

On behalf of defendant, Frank M. Ish, testified that

prior to October 10, 1901, the date of the Ivanpah location, he examined the ground, and went over the hill to ascertain where there was vacant ground. Among other things, he said: "In looking this ground over I went to every monument that was on that hill that could be seen. Commencing at the north end of the Mizpah—or the east end of the Mizpah, and going across the ground in a northwesterly direction, and whatever ground was vacant to the left of what I thought to be the Silver Star location

* * * I examined all of the monuments that I could see of whatever nature or description was on that ground, and I found in my investigations, up near the top of Mount Oddie, I found the location post, discovery post, of the Dave Lewis Hope claim. I found a monument probably 20 inches high, possibly 2 feet and a half across. * * *

A small monument of rock, and in that monument a small can, a baking powder can or something of that kind, I think, with a removable top, and I took out and read the notice. This notice then claimed, if my recollection serves me right, 500 feet northwesterly, and a thousand feet southeasterly, or northerly and southerly. * * *

I am not exactly positive of that, more than it was, I think, northerly or northwesterly, and southeasterly. Knowing the latitude that prospectors take to get the directions and locations of a claim, I sought to the north for space that would indicate where his lines were, and I found none. I then went to the south again, and examined all the ground along on the line of the Mizpah, or about that point, which would take it about the required distance, and I found none there. There were no side monuments

that I could find, and not knowing further about his ground, I located the Ivanpah.”

After giving a description of how he made the Ivanpah location, where his posts and monuments were placed, etc., upon which there is no controversy, he testified in answer to questions, as follows: “Q. State whether or not there was any excavation in the nature of a cut on that ground in October, 1901, when you went there? A. No, sir, there was absolutely not a breaking of the surface, not a pick point that was visible for a distance of a hundred feet anywhere within the confines of what was then located as the Ivanpah claim.”

He was asked whether any work was done by him on the Ivanpah. “A. Yes, sir, I did not do the work myself, but I employed Mr. L. O. Ray; he subsequently did the work; he did it about the first of December, by driving a cut into the hill which exposed the vein at a depth of ten feet. Q. Was any work done within the limits of the Ivanpah claim subsequent to October 8th or 9th, 1901, other than this work? A. No, sir; there was none done, not a particle. Q. Now, as to 1902, was there any work done within the Ivanpah by anyone? A. Yes, some time in the month of February. * * * I don't know the date. I at that time had charge of a property at a place called Weepah out at Lone Mountain, and employing a number of men, it was necessary for me to go into town very often, that is, quite often, sometimes once a week, sometimes once in two weeks, or oftener. I do not remember the dates, but on returning from one of these trips I saw that an excavation had been made on the side of the mountain at a point

where, very near where the present location of the North Star shaft is. It was new, and I discovered it, as I say, from a long distance. The breaking of the surface of that hill you can see for long distances. It was plainly visible from the town."

His attention was called to a diagram made by Mr. Carr, and he was asked the question, "Assuming that the white lines as made by Mr. Carr are the lines of the Dave Lewis Hope claim, where would the dump made when you were going back and forth to Weepah be inside of those white lines or outside of them? * * * A. I believe it would be clear outside of their lines. Q. About how many feet would it be from the point where you found the Carr notice?" And after specifying certain figures marked on the diagram, he was asked, "Using that as a starting point, how far outside or inside of the westerly side line of the Dave Lewis Hope claim would that dump be? A. It would be well without it."

In the course of his testimony: "Q. Was there a smaller cut at the place where you say you saw this work done in February; was there a small cut prior to February at that place? A. No, sir. Q. Could it have been there and you not have seen it? A. No, sir; it could not have been there and I not have seen it. * * * Q. You have heard Mr. Carr testify that in August of 1901, he put up nine large monuments there on that ground, and put tin cans in each of them, and stakes in each of them, I will ask you whether or not at any time in 1901 you saw any monuments or stakes of the kind or character at the place described by Mr. Carr, except the one where you found

the notice of location? A. No, sir, I never saw them, and I know further that if they had existed I could not have helped but seen them.”

There were eight other witnesses on behalf of the defendant who testified to seeing the location monument and notice of location at or near the point testified to by Mr. Ish, and several of them testified as to the examination of the ground, and finding no posts or monuments on the lines testified to by Mr. Carr previous to the time when Porter made his amended location, and many reasons are given tending to show that the witnesses could not be mistaken. They vary somewhat as to the distance of the location monument from the work in the cut near the North Star shaft, most of them placing it up on top of the hog's back “near the apex of the Mount Oddie.”

Nine witnesses besides Ish testified that there was no work done by anybody at the point testified to by Carr near the North Star shaft, until the month of February, 1902. The testimony upon this point is clear, direct, positive and convincing in its character. It seems unreasonable to believe that the witnesses could have been misled or mistaken.

A brief reference to the record will indicate with sufficient clearness the general character of this testimony.

Ray, a stockholder in the defendant corporation, was familiar with the location. He testified that the first time he saw the cut was “about the 15th of February, 1902”; that he lived at Ray and frequently visited Tonopah; that “the trail I went over time and again in December went right to the side, not more than three feet, from where

that cut was placed afterwards"; that there "never was any cut in that mountain during the month of December, 1901, or at any time previous to that"; that he was over the ground four or five times during the month of January.

Curtis, a wholly disinterested witness, testified that there was no cut or excavation within a radius of 200 feet from where the North Star shaft now is, when he visited the place in November, 1901.

The testimony of Oddie, and several other disinterested witnesses is substantially to the same effect.

Ramsey testified that he was on the ground with Curtis and Salsberry, and that there was no cut or excavation at that place. "Q. How do you know? A. Well, I know because we were right in the particular spot; sat down there for a while, probably half an hour we sat there and talked, Mr. Curtis, Mr. Salsberry and myself. Q. Was there any digging, or use of a pick there at that time? A. I didn't notice any digging at all. Q. Did any of your party do any digging there at that time? A. I did a little digging with a pick; went around and made a little hole a few inches deep. Q. What were you digging on, if anything? A. We were sitting on the ground there, and a kind of streak ran down there; I dug down and dug out some black looking stuff, manganese."

The testimony of John McCune, a typical pioneer mining prospector, is very strong. He knew Dave Lewis, and at one time worked three shifts for him on the Dave Lewis Hope claim along about the first of February, 1902. The work consisted of a crosscut, "an open cut" near

where the North Star shaft is now; "wasn't very far from it sure. Q. Who paid you for that work? A. Dave Lewis." He used powder and steel procured from Davis & Lothrop. Dave Lewis showed him the location monument. "It was up on a ridge * * * a little bit west of north from where we done the work. Q. About how far north would you figure it? * * * A. I didn't have any compass for that. Q. How far would you guess it to be? A. Well, I would guess it probably 300 feet, some place in that neighborhood. * * * Q. When you went up to do this work was there any cut where you started this cut in? A. There was a little work there, not anything to speak of * * * you could not call it work, it was just enough to show that somebody had been on the ground, I guess. Q. Been scratching there? A. Well, that is all it was * * * I could not call it location work at all * * * Oh, it was just enough to show that there was somebody there, it was kind of drawn, or shoveled, the dirt, or I don't know whether they had a shovel at all or not."

It appears from the record that Dave Lewis before his death made a confidant of Mr. Davis, a merchant in Tonopah; deposited his money with him, when he had any; traded with him, and often talked about his property, and of the Dave Lewis Hope claim. The books kept at the store of Davis & Lothrop show the purchase of the material furnished McCune at the request of Lewis at the time mentioned.

In April or May, 1902, having heard much talk about the Dave Lewis Hope, Davis, in the interest of Lewis, and Mr. Harris, the secretary of the defendant, made

an engagement with Lewis and met him on the ground with the avowed purpose of having him show them where the ground was, and what work had been done upon it, etc. Much of the testimony of these witnesses consisted of statements and declarations made by Lewis, which will only be considered as leading up to the facts testified to by the witnesses. Lewis showed them, among other things, the cut at the point near the North Star shaft, and told them the work was done in February, 1902. He also pointed out to them the location monument of the Dave Lewis Hope, about 300 feet northerly up the hill from the cut where he claimed he had done some work. They went to this monument, examined the ground thoroughly all around the vicinity, and found nothing to show that any work had ever been done there.

Eleven witnesses, men of prominence and good standing in Tonopah, and nearly all of them wholly disinterested, testified that they were well acquainted with the general reputation of Charles J. Carr in the community as to truth, honesty and integrity, and that it was bad.

The mere contradiction of a witness does not necessarily warrant the Court in disregarding the whole of his testimony for want of corroboration, but the contradiction may be such as tends to weaken, if not entirely destroy, the force and effect of his testimony. A witness may also be directly impeached by proof that his general reputation for truth, honesty and integrity in the community where he resides is bad.

The burden of proof to establish the validity of the Dave Lewis Hope claim, and that it included some por-

tion of the ground embraced within the boundaries of the Ivanpah location, was upon complainants. They failed to establish these facts by a preponderance of evidence to the satisfaction of the Court.

There was no amended location made to the Dave Lewis Hope until long after the ninety days had expired, within which time it may be conceded for the purpose of this case, that an amended notice of the Dave Lewis Hope claim might have been made, so as to include a portion of the Ivanpah location.

The original location was made August 26th, 1901; the amended location by Porter was not made until May 17, 1902, over eight months after the original location was made, and long subsequent to the date of the location of the Ivanpah claim. This amended location in so far as it covers any portion of the Ivanpah location, in the light of all the facts, is subsequent in time to the rights acquired by the Ivanpah claim. If the amended certificate of location of the Dave Lewis Hope claim had been made and recorded within the ninety days provided by the statute, or at any time thereafter before the Ivanpah was located, then it might be claimed that the record notice thereof would have been *prima facie* evidence of its own sufficiency, as provided by the statute of Nevada. But, as is said in *I Lind. on Mines* (2 ed.), sec. 393: "The real purpose of the record is to operate as constructive notice of the fact of an asserted claim and its extent. When the locator's right is challenged, he should be compelled to establish by proof outside of the certificate all the essential facts, without the existence of which the certificate possesses no po-

tential validity." And further adds: "These facts once proved, the recorded certificate may be considered as *prima facie* evidence of such other facts as are required to be stated therein."

After a careful examination and consideration of all the relevant testimony contained in the record, I am clearly of the opinion that the decided weight of the evidence shows that on the 10th day of October, 1901, the ground then located by Ish as the Ivanpah, was vacant, public mineral land, subject to location; that the Ivanpah was a valid location; that the locator and owners thereof have fully complied with the law, and have the better right and title to the ground covered by such location.

The fact that no amended location of the Ivanpah ground was made within the ninety days after the location, cannot be taken advantage of by the complainants under the facts of this case. I do not understand the law to be, in cases where the original notice is clear, definite and certain, and the boundaries of the claim so marked and monumented that the same can be readily traced and determined, that it is necessary for the locator thereof to file an amended certificate of location, as required by sections 210 and 213 *Cutt. Comp. L. Nev.* That statute was passed for the benefit of the locators, giving them ninety days to perfect their location, to cure defects, if any existed in the original notice, or the marking of the boundaries; mistakes in the directions and courses, etc. The certificate of location, and amended certificates, may always be made within the

ninety days so as to allow the discoverer "to rectify and readjust his lines whenever from any cause he desires to do so, provided he does not interfere with or impair the intervening rights of others." But if the locator is satisfied with his original notice, he can file the same within ninety days, and can call it his certificate of location.

The object of the statutes of Nevada, touching this matter, was fully discussed and stated by this Court in *Tonapah & Salt Lake M. Co. vs. Tonopah M. Co.*, 125 Fed. 389, 396, and the principles there announced are applicable to this case, and fully support the views I have expressed.

The defendant proved all the necessary facts entitling it to a patent. Let a decree be entered in favor of the defendant, with costs.

[Endorsed]: No. 771. In the Circuit Court of the United States, Ninth Circuit, District of Nevada. Jerome P. Porter et al., Complainants, vs. Tonopah North Star Tunnel and Development Company, a Corporation, Defendant. Opinion. Filed November 28th, 1904. T. J. Edwards, Clerk.

*In the Circuit Court of the United States, Ninth Circuit, in
and for the District of Nevada.*

<p>JEROME P. PORTER, JOHN G. JURY, THOS. W. CHANDLER, CHARLES J. CARR and Mrs. MARY THOMP- SON,</p>	<p>Plaintiffs,</p>	<p>No. 771.</p>
<p>vs.</p>		
<p>TONOPAII NORTH STAR TUNNEL AND DEVELOPMENT COMPANY (a Corporation),</p>	<p>Defendant.</p>	

Decree.

This cause came on regularly to be heard at this term, and the Court having heard the proofs offered in support of the respective parties, and being fully advised in the premises, this Court now finds, orders, adjudges and decrees as follows, to wit:

That said complainants, Jerome P. Porter, John G. Jury, Thomas W. Chandler, Charles J. Carr and Mrs. Mary Thompson, are not, and never were, the owners, or in the possession, or entitled to the possession of any part of that certain mining claim or premises situated, lying and being in the Tonopah Mining District, Nye county, State of Nevada, known and designated as the Ivan Lode Mining Claim, and more particularly described as follows, to wit: Beginning at the said post marked N. and center of the said Dave Lewis Hope (or

Mizpah Intersection) mining claim, and running thence S. 82° W., 242 feet to a point at the intersection of the north boundary of the said Dave Lewis Hope (or Mizpah Intersection) claim with the west boundary of the said Ivanpah Lode Claim; thence S. $3^{\circ} 24'$ E. 760 feet to the said post marked W. center side line of the said Dave Lewis Hope (or Mizpah Intersection) mining claim; thence S. $3^{\circ} 44'$ to the intersection of the west boundary of the Dave Lewis Hope (or Mizpah Intersection) claim with the south boundary of the Ivanpah Lode Claim; thence N. $86^{\circ} 39'$ E. 560 feet to corner No. 3 of the said Ivanpah Lode Claim; thence N. $3^{\circ} 24'$ W. 490 feet to the post marked E. center side line of the Dave Lewis Hope (or Mizpah Intersection) claim; thence north 8° W. 750 feet to the post marked NE. corner of the Dave Lewis Hope (or Mizpah Intersection) claim; thence S. 32° W. 300 feet to the place of beginning and containing approximately 9.92 acres of ground.

That on the 10th day of October, 1901, the mining claim and premises and the areas now embraced within the boundary lines of the "Ivanpah" mining claim, as described in defendants' application for a patent, were vacant and unoccupied mineral lands of the United States of America; that on the date last aforesaid, one Frank M. Ish, a citizen of said United States, discovered a ledge or lode of gold and silver bearing quartz or other rock in place, within the present boundaries of the said "Ivanpah" mining claim, as described in said application for patent, located the same and distinctly marked on the ground the said boundaries, so that said

boundaries could be readily traced, and then and there entered into possession of said "Ivanpah" mining claim and premises and that said Ish and his grantees and successors ever since the date last aforesaid have been and now are in the actual, peaceable, quiet, open and notorious possession of said "Ivanpah" mining claim, holding and claiming the same, and the whole thereof, in their own right (subject to the paramount title of the United States), and adversely to all persons whomsoever.

That said locator of said "Ivanpah" mining claim and his grantees and successors in interest, since the 10th day of October, 1901, in all respects have held, possessed and worked said mining claim, according to and in all respects have complied with all the provisions of law.

That the defendant, the Tonopah North Star Tunnel and Development Company, is now the owner (subject to such paramount title), in the possession, and entitled to the possession of the Ivanpah Mining Claim as described in said application for a patent, and that by itself, its predecessors in interest and grantors, it has been such owner (subject to such paramount title) by virtue of the location thereof, made as aforesaid, and by virtue of compliance with the acts of Congress and customs of said Tonopah mining district, by this defendant, and its predecessors in interest and grantors, ever since the 10th day of October, 1901.

That said complainants have no estate or interest or possession or right of possession of, in or to any part or portion of the said Ivanpah Lode Mining Claim, and that the alleged claim of any estate or interest or right by

said complainants as against any part or portion of said Ivanpah Lode Mining Claim is invalid and void.

That the defendant have and recover of said complainants its costs herein taxed at \$529.30.

Dated at Carson City, Nevada, February 15, 1905.

THOMAS P. HAWLEY,
Judge.

[Endorsed]: No. 771. United States Circuit Court, Ninth Circuit, District of Nevada. Jerome P. Porter et al., Plaintiffs, vs. Tonopah North Star Tunnel and Development Company, a Corporation, Defendant. Decree. Filed February 20th, 1905. T. J. Edwards, Clerk. Campbell, Metson & Campbell, Attorneys for Defendant, Rooms 115, 116, 117, 118, 119, 120, 121, 122, Crocker Building, San Francisco, Cal.

In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

<p>JEROME P. PORTER, JOHN G. JURY, THOS. W. CHANDLER, CHARLES J. CARR and MARY THOMPSON, Plaintiffs,</p>	}	No. 771.
vs.		
<p>TONOPAHO NORTH STAR TUNNEL AND DEVELOPMENT COMPANY (a Corporation), Defendant.</p>	}	

Testimony.

The above-entitled cause came on to be heard on the 11th day of July, 1904, before Honorable THOMAS P. HAWLEY, District Judge, when the following proceedings were had and testimony introduced.

Appearances:

GAROUTTE & GOODWIN, for Plaintiff.

CAMPBELL, METSON & CAMPBELL, KEY PITTMAN and K. M. JACKSON, for Defendant.

ADA F. TORREYSON, U. S. Stenographer.

Mr. CHARLES J. CARR, one of the plaintiffs called and sworn, testified as follows:

Direct Examination by Mr. GOODWIN.

Q. Where do you reside?

A. North Berkeley, Berriman Station.

(Testimony of Charles J. Carr.)

Q. In what State? A. California.

Q. How long have you made that your residence or considered that your home?

A. For the last fifteen years.

Q. That was your residence, and you were residing there, were you, when this action was commenced, a year ago, or such a matter? A. I was, yes.

Q. Are you acquainted in the Tonopah Mining District, Mr. Carr? A. Very well.

Q. When were you first there?

A. In October, 1900, we were the first prospectors in there outside of Jim Butler.

Q. When you and Mr. Butler were there state who else was there?

A. My partner Mr. Leidy, Wils Brougher, Mr. Oddie, that was when we first went in there; that was all that was in there, and the Clifford boys.

Q. Was Mrs. Butler there? A. She was, yes.

Q. Now, about what month was this?

A. October, I believe.

Q. October, 1900? A. Yes, sir.

Q. Did you have any lease, or were you in there when the leases were first made on the Mizpah by Mr. Butler?

A. My partner and I had the first lease in there.

Q. You and your partner had the first lease on the Mizpah? A. No, it was a spur off of the Burro.

Q. Did you and your partner work that lease?

A. Yes, sir.

Q. State what the result was, that is, whether you

(Testimony of Charles J. Carr.)

took out money, or whether you worked the lease at a loss?

A. Well, we took out money, made from twenty to twenty-five thousand dollars apiece.

Q. State how long you continued there in Tonopah?

A. Well, I stayed there about thirteen or fourteen months, and went to San Francisco.

Q. So you were there during all the early history and period of the Tonopah Mining District? A. Yes, sir.

Q. Starting in with the fall of 1900, state to the Court whether or not you made any locations?

A. I made a location of the Mining Chance, of the White Elephant, the Midway and the West End.

Q. Those were locations that since have become prominent locations in that district, are they?

A. Yes, sir.

Q. State whether or not, covering that period of time, you helped others there in making locations, Mr. Butler, for instance?

A. I done three locations for Jim Butler.

Q. In making these locations state to the Court whether or not you became familiar with the method and manner of making locations?

A. Well, I made my locations the same as Jim Butler, as I made for him, 1,500 feet long and 300 feet wide.

Q. Were you in the Tonopah Mining District in August, 1901? A. I was.

(Testimony of Charles J. Carr.)

Q. Were you acquainted at that time with a man by the name of Dave Lewis? A. I was.

Q. How long had you known him?

A. I had known him since the camp began there.

Q. Since the camp began? A. Yes, sir.

Q. He was one of the first men in there, was he?

A. He was, yes, sir.

Q. Did you attempt to make a location of any ground in the month of August, 1901?

A. Dave Lewis and I located a claim there, I named it the "Dave Lewis Hope."

Q. Now, state to the court what day that was?

A. The 26th day of August, 1901.

Q. State what you and Mr. Lewis did that day?

A. We located the claim; we put up monuments, it took us two days to put our monuments up, there was nine monuments.

Q. State just what you did?

A. Well, we put up our monuments in two days, and laid off two days; the fifth day we went up and took some oyster cans with us and wrote out the locations and put them down, as is usual and as is required.

Q. State to the court whether or not you put up a monument and stake at what you term the discovery?

Mr. METSON.—We object to leading the witness, let him state what he did.

A. Mr. Lewis got the cans and I went down and got

(Testimony of Charles J. Carr.)

the stakes, what there was, what I could get, there was nine stakes.

Q. What was the size of those stakes?

A. Three by four.

Q. And how long?

A. About two and a half or three feet long.

Q. What did you do with them?

A. We put them in the monuments on top of the locations.

Q. Describe to the Court where the first stake was put?

A. Well, it was put up where we found our lead.

Q. Are you acquainted with what is now known as the North Star shaft, the present shaft where the North Star tunnel is worked? A. I am.

Q. Where was this stake placed with reference to this shaft on the ground?

A. About 40 or 45 feet from that.

Q. About 40 or 45 feet from that in what direction?

A. North.

Q. You say you had nine stakes, state where the other stakes were placed.

A. Well, we located from that point, from the location point, 500 feet northwest, 1,000 feet southeast.

Q. Now, taking this thousand feet southeast from this stake that you described, to what ground did that carry you? A. I do not understand you.

Q. Starting in at the stake that was 45 feet north of the present North Star shaft, and going southeast a

(Testimony of Charles J. Carr.)

thousand feet to what ground did you come, to what mining claim did you come?

A. To the Mizpah ledge.

Q. In other words, you located southeast from your discovery shaft a thousand feet down to the Mizpah ground? A. Yes, sir.

Mr. METSON.—We object to that on the ground it is leading and argumentative, and putting a conclusion in the mouth of the witness, and we think it is improper.

Mr. GOODWIN.—That is taken in connection with what he has already testified to.

The COURT.—He said he did not understand the question, I think it is simply explanatory, and I will allow the question.

Q. Then you said you located northwest 500 feet from the stake, a distance of 500 feet?

A. Northwest; yes, sir.

Q. State to the court what was done with these other stakes?

A. How I located them, you mean? (Question withdrawn.)

Q. This stake that you say was placed 40 or 45 feet north of the present shaft of the North Star, how was it placed, describe to the court how it was placed, whether it was in rocks?

A. It was placed in rocks and a three by four scantling in it.

(Testimony of Charles J. Carr.)

Q. In other words, this scantling was placed in a mound of rocks, the rocks built around?

A. Right on top of the mound of rocks.

Q. State what was done and where you placed the other stakes?

A. Well, from the northwest corner I measured off 500 feet east, that was the middle monument; from there I measured off a thousand feet to the southeast corner, then I done the same on the other side. Then I measured from the southwest corner to the north-east corner 600 feet.

Q. And what did you place or put there, if anything?

A. I put the same monuments as on the other corners.

Q. Just describe to the court generally what you did there?

A. I had put no monuments up before, after I measured it then I put my monuments up and put scantling in the top of them.

Q. Describe what those monuments consisted of, the size?

A. Four feet at the bottom and three feet high.

Q. Of rock? A. Of rock.

Q. Where was the scantling?

A. The scantling was right on top of the rock, right in the center of the rock.

Q. Go on and describe where you placed each one of these?

(Testimony of Charles J. Carr.)

A. We took these cans and put our location papers in each one, describing each corner, whether it was northeast, or what it was; the northeast corner I put a notice in there describing that corner, and done the same in the southeast corner, and done the same on the southwest corner.

Q. Now I will have to ask you again, how many of those stakes and monuments did you build?

A. Nine.

Q. Where were those nine monuments and stakes placed by you; in other words, when they were built, describe to the court what tract of ground they described, if any, that is what shaped piece of ground they described, if any, on the ground itself.

Mr. METSON.—That is asking for his conclusion, and we ask that the witness state what he did.

The COURT.—You will get at it quicker if he states what he did first, the first monument he built, and then the direction and the number of feet to the second monument, and so on.

A. The first monument I built was the location monument on the mineral belt, the mineral ledge.

Q. Where was the next monument you built?

A. The next monument was the northwest corner.

Mr. GOODWIN.—If your Honor please, so there may be no confusion arise, we have not a plat or survey, only the small one that is in the adverse, and could I

(Testimony of Charles J. Carr.)

have the permission of drawing a diagram, a hypothetical one, on the blackboard?

The COURT.—Certainly.

Mr. METSON.—We would like to have the witness do the drawing, and we object to counsel drawing anything, until he gets through with his measurements and monuments.

The COURT.—The diagram is simply for the purpose of drawing attention, and if it is not right we will find it out. This case is before the court, and it is not going to mislead anybody.

Mr. METSON.—We save an exception.

The COURT.—Note the exception.

(Counsel draws diagram on blackboard.)

Q. Supposing this is north up towards the top, and this is west, the left hand; and this is east, the right hand; and this is south, the bottom of the blackboard, and that the North Star shaft is somewhere, with reference to this diagram, as indicated by that point, now indicate to the court with reference to that diagram approximately where you placed the first stake.

Mr. METSON.—We object to that upon the ground that the question assumes something not proven in this case, and adopting points which the witness should fix, and not counsel.

(Testimony of Charles J. Carr.)

The COURT.—That is true, Mr. Metson, but the idea is to get this witness some place, and that is simply a diagram in connection with that shaft; the shaft is on the ground and you cannot move it. If that is not correct, there would be no trouble, he tells the distance.

Mr. METSON.—This is the point; our theory of the case is that the plaintiffs' location has been floated down on to us, and these monuments, and this shaft, are very material, and that is the reason I enter these protests.

The COURT.—I see no objection; no one is going to be bound by that diagram.

Mr. METSON.—We save an exception. (Question read.)

Q. Do you understand that? Looking at this diagram, taking this top as north, the left hand as west, the right hand east, and the bottom as south, and also taking that little point in there as representing the position of the North Star shaft on the ground, state to the court and indicate on the plat where you placed the first stake approximately.

A. Our location work was here, about there. (Marks the point indicated with figure "1.")

Q. You say there is where you placed the first stake and monument?

A. Here is where I put my first location work, put my monument, put a 3 by 4 stake in the top of it and

(Testimony of Charles J. Carr.)

put a can in there, as the location work, put a can in the location work and a paper in the inside.

Q. State to the court and indicate on the diagram where you placed your next stake.

A. I measured from here—I made a mistake before saying west, it is north; I measured 500 feet from here (Point 1) over the apex of the mountain, and located a claim there (marks the point "2"), that was north-east. I made a mistake in the other when I said it was west, it is east. Then I measured from this stake 600 feet (Point No. 2), northwest. (Marks point "3.")

Q. What did you do and what did you place there?

A. I placed a monument of rocks, a stake 3 by 4 in a can with my location at the end, described in this that it was the northwest corner, that was on the paper in the location can.

Q. Then which way did you measure, if any, and what did you do?

A. Then I measured, I went back here, I was on the hill, on the highest part; I measured from the north-east corner (Point 2) 500 feet, that was the middle one—no, I made a mistake, I measured from there 750 feet, that was the fourth. (Marks point "4.")

Q. What did you place there, if anything?

A. I placed a monument of rocks, pieces of scantling, 3 by 4, describing the northeast center mark.

Q. When you say east center, you mean the east center side line?

(Testimony of Charles J. Carr.)

A. East center side line, yes, sir. From there I measured 750 feet to the southeast corner. (Marks point "5.")

Q. What did you do there, or what did you place there, if anything?

A. I placed a monument of rocks, quite a pile of rocks, 4 by 3. I placed a can with a paper in it describing this corner (No. 5) as the southeast corner; I measured from there 300 feet to here (marks point "6") and placed a monument of rocks, and put a piece of 3 by 4 scantling in it, described that as the end line, south end line.

Q. Now right there, state what stake, if any, that particular monument was near, what I mean by that is with reference to some other ground, the Mizpah or any other?

Mr. METSON.—We object to that as leading.

The COURT.—Strike that out, the stake on any other claim, if any.

A. The Mizpah ledge was the only ledge there at the time; the only stake that was there was the Mizpah, so that it could not have been any other. Then I measured from this center south (Point 6) monument, 300 feet southwest (marks point "7") and built a monument there of 4 by 3 and put a scantling in, and an oyster can in it, and notification in it describing the

(Testimony of Charles J. Carr.)

southwest corner. I measured from there 750 feet, and put this the west center. (Marks point "8.")

Q. What did you place there, if anything?

A. I placed a mound of rocks 4 by 3, and a scantling 3 by 4 with an oyster can, and a location in it describing the west center. That was 750 feet from there to there. (Point 8 to point 3.)

Q. Did you place any other stake?

A. No, not as I know of.

Q. Was there a stake placed at the north end center?

A. The north end center?

Q. Yes? A. Yes.

Q. When did you place that stake?

A. I placed that the first day—oh, you mean the rocks? We put the rocks there the first day.

Q. Indicate on that plat where you placed that?

A. You mean the north center?

Q. Yes, the north center?

A. I overlooked that; 300 feet.

Q. What did you place there?

A. I placed that there the first or second day, I don't know which.

Q. Indicate on the diagram there the position of that stake.

A. Well, this is it. (Marks point "9.") This was 300 feet from here to there (from 3 to 9), and 300 feet from there to there (9 to 2).

Q. What did you place there, a mound and stake just like the others? A. Yes, sir.

(Testimony of Charles J. Carr.)

Q. Now state whether these stakes and mounds were all placed there the same day or whether the mounds were placed at one time and the stakes at another?

A. The stakes was not placed until five days afterward.

Q. Five days afterward? A. Yes, sir.

Q. When were the mounds built, on what day?

A. The 16th and 17th of the month.

Q. The 16th and 17th?

A. The 26th and 27th, I got the numbers mixed up.

Q. That is, if your notice was dated the 26th, the monuments were built that day and the next day.

Mr. METSON.—We object to that, that is assuming a fact not proven. A. I said it took two days.

Mr. METSON.—It is assuming a notice, that is what I am objecting to.

The COURT.—It is not about that, it is the date, the court understands it.

(Question read.)

A. Yes, sir.

Q. State when with reference to that date you placed the stakes there?

A. Three days afterwards I placed the stakes in cans, and notices; I put one notice the first day from the location ground, on the vein.

(Testimony of Charles J. Carr.)

Q. Will you examine that and state to the court whether that is a copy of the notice?

(Hands paper to witness.)

Mr. METSON.—He can state whether he made it himself, it appears to be a certified copy from the record.

Mr. GOODWIN.—I will withdraw that and ask another question.

Q. Did you make a copy, personally, of the notice that you posted on the discovery shaft or discovery monument? A. Yes, I always do that.

Q. As a matter of fact, in this case did you do it?

A. I did.

Q. What did you do with that?

A. I handed that to Mr. Egan.

Q. Who was he? A. District Recorder there.

Q. Did you cause it to be recorded in the county records? A. With the District Recorder.

Q. With the District Recorder first, and did you afterwards have it recorded with the County Recorder?

A. No, Mr. Lewis had it recorded in the County Recorder's, it was customary, and I had it done in the District Recorder's.

Q. But a copy of the notice that you posted you filed with the District Recorder there, and afterwards it was recorded with the County Recorder?

A. Yes, sir.

Q. In these cans that you say you placed at the corners, you placed notices in those cans?

(Testimony of Charles J. Carr.)

A. Describing what corners and what directions they were in.

Mr. GOODWIN.—If your Honor please we now offer the following location notice:

Complainants' Exhibit No. 1.

LOCATION NOTICE DAVE LEWIS HOPE.

Notice is hereby given that the undersigned has this day located fifteen hundred linear feet on this vein or lode, supposed to run in an northwest and south E. direction with three hundred feet on each side of the vein. Commencing at this monument and running one thousand feet in a southeasterly direction, and five hundred feet in a northwesterly direction. This mine is situated in the hill or mountain east of the group of mines known as the Tonopah Mines owned by J. Butler and Co. This mine shall be known as the Dave Lewis Hope. Situated in Tonopah Mining District, Nye Co., Nevada. Dated Aug. 26, 1901.

Locators: DAVE R. LEWIS.

CHAS. J. CARR.

750 feet each.

Recorded at request of T. F. Egan, Sept. 2, 1901, at 3 P. M.

W. BROUGHER,
Co. Recorder.

(Testimony of Charles J. Carr.)

Recorded in Book E, pages 123 and 124 of Mining Locations.

State of Nevada,
County of Nye,—ss.

I, W. J. Rice, County Recorder of Nye County, State of Nevada, do hereby certify the foregoing to be a full, true and correct copy of location notice of "Dave Lewis Hope" Claim, Tonopah Mining District, Nevada, recorded on the 2d day of Sept., 1901, at 3 o'clock P. M., and as the same appears of record in Book E of Mining Location, pages 123-124, Nye County, Nevada, Records.

Witness my hand and official seal this 2d day of April, 1904.

[Seal]

W. J. RICE,

County Recorder, Nye County, State of Nevada.

By W. H. COWAN, Deputy.

(Paper admitted in evidence without objection and marked Complainants' Exhibit No. 1.)

Mr. GOODWIN.—We also offer a certified copy of the same notice from the District Recorder.

Complainants' Exhibit No. 2.

DAVE LEWIS HOPE LODGE.

Notice is hereby given that the undersigned has this day located fifteen hundred linear feet on this vein or

(Testimony of Charles J. Carr.)

lode, supposed to run in a northwest and southeast direction with three hundred feet on each side of the vein commencing at this monument and running one thousand feet in a southeasterly direction and five hundred feet in a northwesterly direction. This mine is situated in the hill or mountain east of the group of mines known as the Tonopah mines owned by Butler and Co. This mine shall be known as the Dave Lewis Hope. Situated in Tonopah Mining District, Nye County, Nev.

Dated Aug. 26th, 1901.

Locators: DAVE LEWIS,
CHAS. CARR.
750 each.

Recorded at request of Chas. Carr, Sept. 2d, 1901,
at 3 P. M.

F. H. LUETJENS,
Deputy Dist. Recorder.

I, Wm. J. Landers, District Recorder of the Tonopah Mining District, do hereby certify that the above is a true and correct copy of the location notice of the Dave Lewis Hope Mining Claim recorded in book B, page 119, of the Tonopah Mining Records.

WM. J. LANDERS,
District Recorder.

Dated this 28th day of March, 1904.

(Paper admitted in evidence, without objection, and marked Complainants' Exhibit No. 2.)

(Testimony of Charles J. Carr.)

Q. Mr. Carr, at that time you were a citizen of the United States? A. Yes, sir.

Mr. METSON.—I suppose that is objectionable, asking for his conclusion. You might ask where he was born.

Q. Where were you born?

A. California, Healdsburg.

Q. Now, the notice which has just been offered in evidence is dated the 26th of August, 1901, and purports to have been recorded in the district records at your request on the 2d day of September following; state to the court whether or not these monuments that you have described here were all up and placed before you recorded that notice with the District Recorder? A. It was, yes; they were all put up and placed before I recorded it; I recorded it the same as I did all the rest of the claims I located.

Q. Now, state to the court what, if any, evidence there was of a ledge at the point where you set up your discovery shaft?

A. There was a vein from four to six inches wide, and traced it for a thousand feet down to the Mizpah ledge.

Q. How did that vein run generally, with reference to the compass?

A. It ran northeast, pretty well east, down to south-westerly.

Q. In other words, it ran northeast and southwest, did it? A. Yes, northeast and southwest.

Q. State to the court whether or not there was any mineral in that vein? A. It assayed from \$2.50 to \$4.20.

Q. Did you have it assayed?

(Testimony of Charles J. Carr.)

A. I had five assays made on it.

Q. And when you say there was a vein there, describe to the court what you mean?

A. Well, there was a vein, it was cropping out from where I put my location work down, I could trace it for a thousand feet, down past the Mizpah ledge.

Q. Were there walls on each side?

A. No, it was just cropping out of the ground, that is all, no walls or anything else.

Q. What was there that caused you or causes you to designate it as a vein?

A. Because it had mineral in it.

Q. How did it differ from the surrounding and adjoining country?

A. Because it was low grade; it was lower grade than the others, it wasn't big enough to start right in to work on it.

Q. That is not what I mean. I will withdraw the question and answer, and will repeat the question. You say there was a vein four, five or six inches wide?

A. Yes.

Q. Was there any difference between the—

A. (Interrupting.) You mean the character of rock?

Q. Yes?

A. It was the same character of rock as the rest of the camp?

Q. As the rest of the camp? A. Yes.

Q. I know, but what I mean is as to the size.

A. The size was from four to six inches wide.

(Testimony of Charles J. Carr.)

Q. When you got to the end of that four or six inches, what did you come against, if anything?

A. It ran into the hill, I could not trace it any further.

Q. That is going along the length of it?

A. As long as it was on the surface I said I could trace it for a thousand feet, while it lasted on the surface, then it ran into the hill.

Q. What I mean is this: If there was a vein from five to six inches wide, how was it standing, perpendicular or how? A. It was on the side of the mountain.

Q. I know, but as you went down on it, if you did go down on it at all, how did it dip?

A. It dipped about—well, you mean about the ledge, when we sunk on it?

Q. Yes, when you go down?

A. It dipped towards the east I reckon.

Q. Dipped into the hill, didn't it?

A. Yes, sir, dipped to the east.

Q. If it dipped to the east there would be something overlying it and something underlying it? A. Yes.

Q. What difference was there between the subject matter that overlay that vein and the subject matter that underlay it, that would cause you to know that there was a vein there, was there any country rock of any kind?

A. It was all country rock; it was porphyry the same as the Mizpah ledge rock.

Q. There was porphyry on both sides of this vein?

A. Both sides of the vein, yes.

Q. And the vein, as you termed it, was quartz?

(Testimony of Charles J. Carr.)

A. Yes, sir, quartz.

Mr. METSON.—Did the witness say that it was quartz?

A. It was quartz.

Mr. GOODWIN.—I will withdraw that question and strike out the answer, and describe to the Court what it was.

A. It was quartz and porphyry, yes, sir; mixed up with a little quartz and porphyry.

Q. Mr. Carr, the recordation with the recorder there is the 2d of September; now, from the 26th of August to the 2d of September, did you do any work on the claim; from the 26th of August, from the time you put up the first discovery shaft, until the 2d of September, did you do any work on that claim? A. Yes, sir.

Q. From the 26th of August to the 2d of September, did you do any work upon the claim other than you have described? A. Yes, sir.

Q. Now understand my question. You say you put up your notice and marked these boundaries here from the 26th of August up to the 2d of September, the day you had the notice recorded? A. Yes, sir.

Q. During that time, that seven days, did you do any work on the claim? A. No, not right away.

Q. State when, if at all, you went back there?

A. About eight or ten days we went back there and done some work, and lay off three or four days and go back and do a little more work.

Q. Now right there, who was with you, if anybody,

(Testimony of Charles J. Carr.)

when you were making this location in putting up these monuments?

A. Dave Lewis was with me all the time.

Q. He was assisting you in all that you have testified to here? A. In all that I done, yes, sir.

Q. Now, when, as near as you can locate, did you and he first go back on the claim to do the location work?

A. About eight or ten, maybe twelve days, I could not say what.

Q. Eight or ten or twelve days? A. Yes.

Q. State to the Court what, if anything, you and he did, and where you did it?

A. We done the work right alongside of the location work.

Q. Of what did that work consist?

A. We made a cut of three lengths of the shovel, the shovel measures five feet, and that made fifteen feet, and from four and a half to five feet wide.

Q. How deep was that cut at the face?

A. It started in about two feet.

Q. By the face I mean the back end.

A. I thought you meant the start. I was getting mixed up. From seven and a half to eight feet high.

Q. With reference to your height?

A. Well, it was a little over my reach.

Q. A little higher than you could reach? A. Yes.

Q. State to the Court when this work that you have described was completed?

A. Well, I done some work on that claim—

(Testimony of Charles J. Carr.)

Q. No, not as to amount, as to time?

A. I guess we were about from thirty-five to forty days doing it.

Q. From thirty-five to forty days? A. Yes.

Q. From what time? A. From the 26th.

Q. You think then that within thirty-five—

A. Not from the 26th; that was making the location and everything, putting the monuments and everything up from the 26th.

Q. Well, would you say then within forty days after the 26th of August you had completed it?

A. Thirty-five or thirty-eight or forty days, something like that; long before the required time, anyhow; we had ninety days.

Q. Lewis helped you, you and Lewis worked together in this work?

A. Yes, sir, sometimes Lewis would go up there and do some work by himself.

Q. During this time that you refer to, the thirty-five or forty days, that period of time, did you and Lewis work together there?

A. The last day, yes, we completed it together; I measured it off and told him we had lots of work done.

Q. Now after that time, and before the first day of January following, were you upon the ground again?

A. No, sir, I was not on the ground until eleven months afterwards.

Q. What I mean is this: From the time after you and Lewis got through, did you go back onto the claim again?

(Testimony of Charles J. Carr.)

A. I went up there to get tools three or four different times.

Q. Not with reference to doing any work, but going back to the claim itself?

A. Yes, sir, I was on the claim several times afterward.

Q. With whom did you go there, if anybody?

A. I had several people going with me; this Fred Mason was one with me.

Q. Anybody else? A. Martin Caper.

Q. When were you and Caper there together?

A. I could not say just when, it was some time in October, I believe.

Q. October?

A. I know it was before the ninety days expired that I fetched him up there.

Q. What did you go up there for, if you recollect?

A. There was a piece of ground up there, and I went to show him for to take it up; there was a little wedge, at least I thought there was, and I wanted him to take it up.

Q. State whether or not there were any tools up in this cut? A. There was several tools up there.

Q. Did you get them there when Mr. Caper was present?

A. I took some tools, some steel down to lease one, where I got them, where I had the lease.

Q. You took some steel down there? A. Yes, sir.

Q. From this cut?

A. From this cut, yes, sir, there was several pieces up

(Testimony of Charles J. Carr.)

there, I could not say how many, laying around here and there.

Q. At that time were the North Star people on that ground in any shape that you know of?

A. No, sir; there was nobody, not a soul.

Q. Nobody making any claim to it at that time that you know of? A. No, sir, nobody at all.

Q. When you were making this location did you discover the evidence of any attempt to locate it before, any monuments or anything of that sort?

A. No, sir; if there was any monuments up there I would not have touched them.

Q. After you and Mr. Caper left, after you went up there this time that you have just testified to, how long was it before you were on the ground again?

A. I believe that was the last time I was on the ground until May, two years ago.

Q. May, two years ago? A. Yes, sir.

Q. Who was with you then?

A. I was with Mr. Chandler, Mrs. Thompson, Mr. Porter and Dave Lewis.

Q. Do you know whether or not any photographs were taken at that time?

A. Yes, that was the amendment location.

Q. Never mind that; I will get that in the proper time. Do you know of any photographs being taken at that time? A. Yes, sir.

(Testimony of Charles J. Carr.)

Q. Who was present?

A. There was myself, Mr. Porter, Mrs. Thompson, Mr. Chandler and Mrs. Chandler.

Q. Anyone else that you recollect?

A. Well, I don't recollect any more.

Q. You don't know whether there was a little boy there or not?

A. And Dave Lewis.

Q. And Dave Lewis was there?

A. Yes, sir.

That is all.

Cross-examination by Mr. METSON.

Q. What is your name?

A. Charles J. Carr.

Q. Is that your correct name?

A. That is my right name, yes, sir.

Q. You say you live there?

A. Berkeley, California.

Q. Near Berriman Station, I understood you to say?

A. Berriman Station, Berkeley, California.

Q. You lived in Randsburg, did you not?

A. I did.

Q. When?

A. Let me see, it was in 1888 and 1889.

Q. 1889?

A. 1888 and 1889, yes, sir.

Q. That was before Randsburg was discovered, was it not?

A. Well, I guess I got it wrong; it was two years and a half before I went to Tonopah.

The COURT.—That would make it 1898.

A. 1898 I should say, I got it mixed up.

(Testimony of Charles J. Carr.)

Q. You went from Randsburg where?

A. Went prospecting.

Q. Where?

A. Went down to Arizona, around through back over the Mojave Desert, through White Mountains, and from White Mountains went to Silver Peak, and from Silver Peak on into Tonopah.

Q. And in 1899 you were in the State of Nevada, were you? A. 1899, yes, sir.

Q. You were in the State of Nevada? A. Yes, sir.

Q. And you were in Esmeralda during all of 1899?

A. No, I was in White Mountains, that is in California.

Q. Which part of White Mountains were you?

A. Above Big Pine.

Q. Then you were in Inyo County?

A. I was in Inyo County.

Q. When did you go over into Silver Peak?

A. We got there in about 1900.

Q. What time? A. About June.

Q. June, 1900, to Silver Peak? A. Yes, sir.

Q. And when did you leave Tonopah?

A. When did I leave Tonopah?

Q. Yes?

A. The first time I left about twelve or thirteen months after I went in there.

Q. Do you remember the month? A. No, I do not.

Q. Do you remember the circumstances?

A. I do, yes.

(Testimony of Charles J. Carr.)

Q. You know you left and you cannot tell the month?

A. I know the circumstances, that I went and got \$200 off of Brougher, because Mr. Oddie wasn't there; there was a couple of thousand dollars in the office of mine, and I got a couple of hundred dollars off of Brougher and went to San Francisco.

Q. Do you remember when that was, the month?

A. I think it was in June, if I ain't mistaken.

Q. In June of 1901? A. 1901.

Q. Or 1902, now which is it? A. 1901, I believe.

Q. You want to pay attention to the questions. You mean 1901? A. Yes, 1901.

Q. Are you sure about that?

A. I am pretty certain.

Q. You located this claim August 26, 1901?

A. Which claim?

Q. That you testified that you located in August, 1901?

A. Yes.

Q. You didn't leave Tonopah before that, did you?

A. Oh, yes.

Q. And came back to locate it? A. Yes, sir.

Q. Then I am mistaken, I thought you misunderstood me? A. No.

Q. And you went to San Francisco before you made the location? A. Yes.

Q. And then you returned to Tonopah?

A. I returned in three weeks.

Q. In June, 1901, then? A. Yes, sir.

(Testimony of Charles J. Carr.)

Q. And then what did you do after you returned to Tonopah? A. I went to work on lease one.

Q. You say you sold lease one?

A. I say I went to work on lease one.

Q. I understand that was one of the first leases in the camp, did you say that? A. Yes.

Q. That was on the Burro?

A. It was on a spur of the Burro.

Q. But within the Burro location, was it?

A. Yes, sir.

Q. When did you sell lease one?

A. I sold lease one somewheres in December, I believe.

Q. December of what year?

A. 1902 or 1903, I could not say which.

Q. December, 1902 or 1903, and you cannot say which?

A. I think it is 1903 if I ain't mistaken.

Q. How long did you work lease one?

A. Pretty near six months.

Q. Who was your partner? A. Louie Leidy.

Q. And when you ceased working it you sold it, didn't you?

A. No, sir, I was still working it, when I sold it.

Q. You still worked it after selling it?

A. No, I sold it after; I was working it and then I sold it.

Q. Well, you didn't work in it for anybody else nor work the lease yourself after you sold it, that is what I am getting at? A. No, sir, I did not.

(Testimony of Charles J. Carr.)

Q. And you obtained that lease on the spur of the Burro on what date, now be clear about that?

A. Now I could not tell you that; it was in 1900 when I got it, it was pretty near the end of the year.

Q. Let us see how this figures out, I don't want to be unfair with you. You say you got the lease in 1900, and you think you sold it in December, 1903, and kept it six months. Get your dates right, we don't want any mistakes about dates.

A. This must have been 1902.

Mr. GOODWIN.—Just understand the question, Mr. Carr, before you attempt to answer.

A. I have no recollection of dates, never kept no dates or years or anything else.

Q. Did you ever have any other leases there?

A. Yes, I had one.

Q. What other one did you have?

A. Gold Mountain, at Gold Hill.

Q. When did you have that lease?

A. I bought that off of Clifford brothers, John Clifford.

Q. When did you have that lease?

A. I could not tell the month I bought that in.

Q. You could not tell? A. No.

Q. Can you tell us what year?

A. 1902, I believe, if I ain't mistaken.

Q. 1902. How long did you have it?

A. I had to throw it up, ran in debt on it.

(Testimony of Charles J. Carr.)

Q. When did you throw it up?

A. Threw it up about six or seven weeks after.

Q. Now, as a matter of fact, didn't you go directly in June of 1900, from Silver Peak over to Tonopah?

A. In June?

Q. Of 1900? A. Of 1900; yes, sir.

Q. As soon as you got to Tonopah you found Mr. Butler you say there, and Mr. Brougher and Mr. Oddie and Mrs. Butler, am I correct about that?

A. You are correct.

Q. Was there anybody else there except Mr. Leidy, who was with you, and those gentlemen I have named, and the Clifford boys, is that right?

A. That is about right.

Q. I am giving it to you right now? A. Yes.

Q. Then you say that you became acquainted with Mr. Butler and with the Cliffords, is that correct?

A. That is correct.

Q. Did you do any work for Mr. Butler at that time?

A. I did; not right away, but a couple of weeks afterwards.

Q. Did you take a lease right away from Mr. Butler?

A. Not until about a month or so afterwards.

Q. About a month or so after you went there?

A. Yes, sir.

Q. Now, Mr. Leidy and you took that lease?

A. Yes, sir.

Q. And you worked it six months?

A. About six months.

(Testimony of Charles J. Carr.)

Q. Didn't you and Leidy sell out that lease in December, 1900? A. In 1900?

Q. Yes? A. I guess you are right about that.

Q. I am right about that? A. Yes.

Q. You took a lease from the Clifford boys on Gold Hill in 1900 some time, didn't you?

A. Yes, while the leases was going on.

Q. While lease number one on the Burro was going on? A. Yes.

Q. Why did you tell the Court that in 1901 you took steel out of this cut and carried it down to your lease with this man Caper?

A. So I did, I borrowed it for up there, and it belonged to the lease, this steel.

Q. In other words, you had closed out your lease in 1900, in December, and you had done work subsequent to August 26, 1901, on this mine, and you took this witness there, Martin Caper, and took the steel out of this hole that you claimed you dug, and carried back to this lease which you sold in December, before?

A. Yes.

Q. And this gentleman, Mr. Caper, went along there, to be a witness, did he? A. No, sir.

Q. Is Mr. Caper here now? A. Yes, sir.

Q. He is here in the courtroom, isn't he?

A. Yes.

Q. And he saw you carry this steel you gathered up in this hole and carry it down to the Burro lease? —

A. Yes.

(Testimony of Charles J. Carr.)

Q. And who owned the Burro lease at that time?

A. Henry Cutting and Billy Foster.

Q. And you delivered the steel to Cutting or to some agent of his? A. Foster.

Q. You delivered it to Foster, personally?

A. No, threw it there and told him the steel was there.

Q. Who was there when you threw it there?

A. I could not tell you.

Q. Wasn't there some one else there when you made this delivery back?

A. I don't know, there might have been a man, I could not say.

Q. Did Mr. Caper help to carry the steel back?

A. No, there was only a little and I packed it myself.

Q. How much was there?

A. Oh, three or four bars.

Q. How long?

A. Some two feet and the longest piece was three feet long.

Q. Did you report that to Cutting and Foster, that you had returned this steel? A. I believe I did.

Q. To whom did you report it?

A. To Foster if anybody.

Q. Don't you know whether or not you told Foster, isn't your memory clear one way or the other?

A. No, I do not, I don't remember that; it was customary for us to borrow steel.

Q. Not customarily, but what did you do at this time?

(Testimony of Charles J. Carr.)

A. I laid it alongside of the forge there.

Q. Did you report it? A. I guess I did.

Q. Have you any memory at all of reporting it to Foster? A. Well, no, I have not.

Q. Have you any memory of reporting it to Cutting?

A. I have not, no, sir.

Q. Have you any recollection of reporting it to anybody?

A. Whoever was up there, I told them there was the steel, and threw it there, one of the workmen, one of the miners.

Q. There was a miner there when you and Caper came down the mountain?

A. There was somebody there working at the forge, sharpening tools.

Q. And you threw down the steel and told him "There is that steel"? A. I guess that is it, yes.

Q. That was in what month, please?

A. In October.

Q. And you have no recollection of who the man was at the forge sharpening tools?

A. I have not, no, sir.

Q. You have no memory about that at all?

A. No, sir.

Q. Could you describe him?

A. No, sir, I could not.

Q. And you don't know whether you knew the man?

A. Didn't know him the chances are.

Q. That you did or did not?

(Testimony of Charles J. Carr.)

A. Yes, the chances are I didn't know him.

Q. That you didn't know him? A. Yes.

Q. Tell us the exact words that you said when you threw down the steel to that man?

A. I says, "There is the steel," I says, "Tell Foster there is the steel," that is what I remember now.

Q. And that is all that was said? A. Yes.

Q. No names mentioned or anything of that kind?

A. "Tell Foster" or Cutting, I could not say which, "I have had it"; it was Foster, I believe I said Foster, if I ain't mistaken.

Q. You have stated all of it, every word that you said at that time to this man? A. That is all I said.

Q. Now, did Caper say anything?

A. No, he didn't; I believe he went ahead on down town.

Q. He didn't see this steel redelivered?

A. I could not say whether he did or not, I could not say whether he still was with me or not.

Q. You say you left Tonopah after that and stayed away twelve or thirteen months?

A. I never said no such thing; I said that I stayed away about—I went away, could not say what month it was when I went away, but I came back in time to do my assessment work on the claim, that was in May, 1902.

Q. You came back in time to do your assessment work on what claim in 1902?—

A. The Lewis Hope Claim.

(Testimony of Charles J. Carr.)

Q. And then how long in 1902 in May, did you remain in Tonopah?

A. In May, I stopped there ten or twelve days.

Q. Ten or twelve days? A. Yes.

Q. Then where did you go?

A. To San Francisco.

Q. Did you go back to Tonopah again?

A. Yes, sir.

Q. When? A. A year afterwards.

Q. In 1903? A. 1903.

Q. Did you go upon this claim?

A. I went close by it, not right on it.

Q. Now, I think that you said you were several days, or two days, putting up monuments? A. Yes, sir.

Q. Was anybody with you when you were putting up monuments? A. Dave Lewis, my partner.

Q. All the time? A. All the time.

Q. How many days did you and Lewis work there in 1901, in August, putting up monuments?

A. We worked two days putting up monuments, and a day putting up notice and scantlings.

Q. Now, what kind of monuments did you build?

A. I built them out of rock, sagebrush and sand.

Q. Did you find any sagebrush up there on the mountain? A. Plenty of it, yes.

Q. Plenty of it there, was there? A. Yes, sir.

Q. And you incorporated sagebrush into each one of the monuments that you built up there did you?

A. I did, yes.

(Testimony of Charles J. Carr.)

Q. About what proportion of sagebrush and rock would you have in those monuments?

A. Well, whatever we could get; had to pack the rock some places; sand and rock all sizes, sometimes we would get a big rock, and sometimes have to take small ones.

Q. Was there half rock and half sagebrush, or what proportion? A. Anything we could get.

Q. But you did have sagebrush in all the monuments, and considerable of it?

A. Some places we had good rocks and would not take any sagebrush.

Q. I thought you said there was sagebrush in all?

A. In some of them, not in all.

Q. On that mountain where you claim these mountains are there is no sagebrush, is there?

A. Don't you bet there is no sagebrush, for the side of the mountain is full of sagebrush.

Q. You will say that, will you?

A. I will say that, yes, sir.

Q. You put sagebrush into the upper monuments, is that your claim now? A. Yes.

Q. How high did you build these monuments?

A. I built them three feet.

Q. Is that all?

A. Four feet wide at the bottom and three feet high.

Q. Is that all? A. That is all.

Q. Were they square up and down, or slope from the base to the summit? A. Sloped from the base up.

(Testimony of Charles J. Carr.)

Q. In August, 1901, you put up how many of those monuments? A. Nine monuments.

Q. Now, you say that the monument at the center of the southern end line was near a Mizpah monument, is that correct? A. Yes, sir.

Q. And you say the Mizpah monument was the only one in that neighborhood?

A. That was all at the time, yes, sir.

Q. Was there a triangle monument in there?

A. No, sir.

Q. Was there a silver top monument in there?

A. That was away down below that.

Q. What was away down below?

A. Below our lines.

Q. What was? A. The silver top lines.

Q. The silver top monument was away below the end line, is that what you mean? A. Yes.

Q. What Mizpah monument was there near your south end center?

A. The Mizpah end line, the center end line, I believe.

Q. The Mizpah center end line? A. Yes.

Q. And that was the only monument that was there?

A. All I seen, yes, sir.

Q. Did you put up these monuments the same as Jim Butler had put up the monuments on the others?

A. Just the same exactly.

Q. You learned from Jim Butler how to put them up?

A. No, sir, I learned long before I seen Jim Butler.

(Testimony of Charles J. Carr.)

Q. I thought you said you had seen Butler put up the monuments, and you marked them the same way?

A. Yes, sir, I did.

Q. Therefore, you know how?

A. I never put any monuments up for Butler, but did the location work for Jim Butler; I done the location work for him, didn't put any monuments up; all the monuments was up long before I went there.

Q. Describe this monument on the end of the Mizpah that you say was the south end center of this location?

A. Built of sand and rock and a post in the center.

Q. What mark was on it, if any?

A. What mark was on it?

Q. Yes? A. I could not exactly tell you.

Q. Can you tell the size of the post?

A. Yes, it was 4 by 4.

Q. And you don't remember whether there were any marks on the post or not?

A. There was marks on it, but I forget.

Q. And you cannot tell any of the marks?

A. Not exactly.

Q. Can you tell any of them?

A. I could if I seen them; I could not swear what was on them now since I have been there, my recollection would not allow me to say.

Q. Mr. GOODWIN.—Are you referring to the Mizpah corner, Mr. Metson, or to the stake that he put there on the south?

(Testimony of Charles J. Carr.)

Mr. METSON.—I am referring to the monument which this witness testified that he saw at the end line of his claim.

Q. Now, you say this first discovery monument that you have described to the Court was about 40 feet north of where the main working shaft of the North Star tunnel is now? A. Forty or forty-five feet.

Q. Did you measure it? A. No, sir.

Q. How do you estimate it?

A. Well, just took a look at it, and imagined it was about that far.

Q. When did you take this last look at it?

A. Last July, a year ago this month.

Q. In July, 1903? A. Yes, sir.

Q. That is the last time you looked at it?

A. Yes.

Q. Did you go up to this hole of yours at that time?

A. Went close, didn't go up to it.

Q. How far did you go to it? A. About 300 feet.

Q. Within 300 feet of it? A. Yes.

Q. And from the hole which you claim you put there it is about 40 feet south to the main working shaft of the North Star now?

A. I didn't say south; I said north.

Q. I say from the hole that you claim you put there, the main shaft of the North Star was about 40 feet south? A. Yes, about that.

Q. That is correct?

A. Forty or forty-five feet.

Q. Not to exceed fifty in any event?

(Testimony of Charles J. Carr.)

A. I could not say, it might be more or less.

Mr. GOODWIN.—He says not to exceed fifty.

A. Well, I didn't measure it; I thought it was about forty or forty-five feet.

Q. When you last saw this North Star shaft was the gallows frame up? A. There was a big dump on it.

Q. Was the gallows frame up when you were there?

A. Yes.

Q. Was there anything over this hole that you claim to have dug? A. The hole I claim to have dug?

Q. Yes?

A. Could not say, wasn't close enough to see.

Q. Now, what kind of scantling did you use for stakes? A. Oh, the common scantling.

Q. What was the size? A. Three by four.

Q. Three by four? A. Yes, sir.

Q. In everyone of these corners?

A. Yes, sir.

Q. And about how long?

A. About two and one-half or three feet long.

Q. Two and one-half to three feet?

A. Yes.

Q. How far would the scantling project above the tops of these monuments?

A. Seven or eight inches?

Q. Did you put any mark on these scantling?

A. Yes, I marked them all; just shaved them off and wrote on them describing each corner, what they were, the same as I put on the can, but not so much; if it was

(Testimony of Charles J. Carr.)

on the northeast corner, I would put the northeast corner.

Q. Is that all the marks you put on the scantling?

A. Yes, sir.

Q. Did you mark each one of the scantling?

A. Just the same way, yes, sir.

Q. Just the same way? A. Yes.

Q. And all that you put on the scantling was northeast corner, southeast corner, northwest corner?

A. Yes, sir, and so on.

Q. And southwest corner? A. Yes.

Q. You have been a sailor, have you? A. No, sir.

Q. You said sou'west?

A. I said southeast corner.

Q. Did you not put the name of the claim upon the scantling?

A. No, I did not, because the location and name was in the can, it wasn't necessary.

Q. What can was the name of the location in?

A. In just as I told you, when I put the notice in the can, I put just describing each corner, and everything told on the paper what it was.

Q. Well, you put a can in each monument too?

A. In each monument, yes, sir.

Q. What kind of a can?

A. An oyster can, the only kind we could get.

Q. How many cans did you use for the whole location? A. Nine cans.

(Testimony of Charles J. Carr.)

Q. Now, you say that you put a location notice in the discovery monument? A. Yes, sir.

Q. Did you put it on paper, what was put on the other monuments in the can?

A. No, sir, we put the location papers on the location, the claim.

Q. Did you put any paper in these other cans, excluding the location monument, outside of the location monument, did you put any paper in the cans in the rest of the monuments?

A. I certainly did in every one of the cans.

Q. Tell us what you wrote on the paper placed in each can at the monument that you designated number two on the plat?

A. Number 2, that was the northeast corner.

Q. The northeast corner? A. Yes, sir.

Q. And I understood you to say that was the first place that you went to after putting up the discovery monument? A. Yes, sir, I believe it was.

Q. Did you put the name of the claim in that can, at your northeast corner? A. Which name?

Q. Of any claim, did you write it?

A. I just put the northeast corner on it.

Q. Just put in the can a piece of paper which had inscribed on it the northeast corner?

A. Northeast corner.

Q. When you got to the place you marked number 4 on that plat, what did you put in the can that you placed there, if anything?

(Testimony of Charles J. Carr.)

A. I put that on the east center, put it in the can.

Q. East center, that would be the east center side line?

A. East center side line, that was what it was.

Q. Did you put side line? A. I believe I did.

Q. And that was all, east center side line?

A. East center side line; yes, sir.

Q. What did you put at the point where you have marked "6" on that plat?

A. I put, that is the south end line.

Q. South end line? A. Yes, sir.

Q. And that is all? A. That is all.

Q. Just those three words, "south end line"?

A. Yes, sir.

Q. What did you put at the point marked "9" on the diagram?

A. I put that on the north center line.

Q. North center line?

A. North end line, end center line.

Q. Give it correctly again?

A. North center line.

Q. And that was all that was in that can?

A. Yes, sir.

Q. When were those cans placed in the monument?

A. Five days after we located.

Q. You made this location in the daytime, did you?

A. Yes, sir.

Q. All the work was done in the daytime?

A. Yes, sir.

(Testimony of Charles J. Carr.)

Q. Did you see anybody when you were putting up these various monuments? A. Lots of them.

Q. Whom did you see there while you were making the location?

A. Not around on the ground, I saw them around town.

Q. Can you remember any one that you saw?

A. Not on the ground, nobody on the ground only Dave Lewis.

Q. Dave Lewis was the only man there after you came there near enough to speak to?

A. Yes, sir; he was the only man there.

Q. And it took you two whole days, yourself and Lewis to put up the monuments?

A. To put up the rock monuments, yes, sir.

Q. After you got the monuments built there, there were no notices at all, or marks on the monuments, or in them, were there?

A. No, not after we put the rock monuments up, there wasn't.

Q. After you completed the monuments what did you do, so far as building them with rock or material?

A. After we built the rock?

Q. Yes, did you finish it in the evening or afternoon?

A. In the evening.

Q. The next day after you built up those monuments, what did you do, if anything?

A. The next day?

Q. Yes?

(Testimony of Charles J. Carr.)

A. Didn't do anything, knocked around town.

Q. What did you do the next day?

A. Knocked around town.

Q. And the next day?

A. Went up and put the cans on there and the notices and the scantlings in the top.

Q. Did you do that all in one day? A. Yes, sir.

Q. Did you disturb the monuments to insert those cans and scantlings?

A. No, not much, a little bit.

Q. Just drove them right down through the center?

A. Had to take the rocks out and place them in with little rocks to make them solid.

Q. Where did you get the scantling from?

A. I believe from Lothrop & Davis.

Q. Who carried them up the hill? A. I did.

Q. How many trips did you make?

A. Made three trips.

Q. From Lothrop & Davis' store up on the hill?

A. Yes, sir.

Q. Did you buy them at Lothrop & Davis' store?

A. I had an account with Lothrop & Davis.

Q. You had an account with them at the time?

A. Yes.

Q. And they were charged to your account?

A. Yes, sir.

Q. Now, after you put up the scantling in these monuments what else, if anything, did you do?

(Testimony of Charles J. Carr.)

A. Well, we didn't do much for eight or ten or twelve days, and then we went up and done the work on it, started in to do the work.

Q. You didn't do much of anything from eight to ten or twelve days, and then some work was done?

A. Then we went up and started in to do the work.

Q. Now who went up? A. Dave Lewis and I.

Q. Anyone else? A. No, sir.

Q. What work was done?

A. Well, we started in to do the location work.

Q. Well, with pick and shovel, sledge, steel, or what?

A. Pick and shovel, a few places there we had to put a shot in, here and there.

Q. And this cut you speak of, what was done by him? A. By Dave Lewis and myself?

Q. Entirely?

A. Well, Dave Lewis, and I didn't go up there one day, and I give Dave Lewis \$3.00 and he fetched up a boy, him and the boy went up there to work in my place, and I don't know who the boy was.

Q. But all the work except this one day, you were present with Lewis? A. Yes.

Q. And you used to go up in the morning together and come down together?

A. No, sir, sometimes would not go up until afternoon, and do a couple of hours work, or an hour's work.

Q. And you don't remember who this boy was?

A. No, I do not.

Q. Were you working this lease at the same time?

(Testimony of Charles J. Carr.)

A. No, sir.

Q. Now this cut that you say that you made there with Dave Lewis, where was that with reference to your location monument? A. Right alongside of it.

Q. Was the location monument not on this ledge that you speak about? A. It was, yes, sir.

Q. Didn't you run this cut on the ledge, or run the cut to one side of the ledge?

A. It runs right across the ledge?

Q. It was a crosscut then? A. Yes, sir.

Q. How was that vein that you speak of dipping?

A. How was the ledge dipping?

Q. Yes?

A. I believe it was dipping to the east, if anything.

Q. It dipped to the east?

A. Dipped just a little bit to the east.

Q. About what angle, was it pretty straight up and down? A. Yes, it was pretty straight.

Q. Pretty near perpendicular was it?

A. Pretty near perpendicular.

Q. And dipped a litte to the east, if anything?

A. Just a little to the east, from the east a little.

Q. And you made a cut in there, a crosscut, which you say was the length of two shovels and a half, wasn't that it? A. Three shovels.

Q. I am mistaken about that?

The COURT.—Yes, he said three shovels of five feet.

A. Three shovels and five feet in a shovel.

(Testimony of Charles J. Carr.)

Q. About fifteen feet? A. Yes, sir.

Q. Was your cut begun above or below your location monument? A. Right alongside of it.

Q. Well, it must have been above or below on the hill? A. The monument was on the top side of it.

Q. The monument was up the hill from the cut?

A. Yes, sir.

Q. And I suppose the outside face of the cut was right where the ledge showed on the surface, was it?

A. No, sir, it was quite a ways, it was six or seven feet from there; we had to start it from the bottom of the hill, and start in about two feet, as we went in it got deeper and deeper, and the vein of the ledge was about half way through as we went through the cut, about seven or seven and a half feet, about half way, I should judge, of the cut.

Q. You made some dump in making this cut?

A. Yes.

Q. And you could see that dump going up the hill from town, couldn't you?

A. Could see it from the town.

Q. The dump showed from the town? A. Yes.

Q. Quite plainly showed from town, anybody down town could see it, could they not?

A. Yes, anybody could see it.

Q. Did I ask the name of the boy that went up there in your place? A. I don't know the boy.

Q. Did you see the boy? A. Yes.

Q. Please describe him to us?

(Testimony of Charles J. Carr.)

A. A boy about sixteen years old.

Q. And he worked up there one day with Lewis?

A. One day.

Q. And you allowed Lewis \$3.00 for it?

A. I gave Lewis \$3.00 to give him.

Q. Was the boy dark or light complected?

A. I could not say, I believe light, if I am not mistaken.

Q. You don't know where he lived?

A. In Tonopah, must have lived there.

Q. You don't know any of his friends and could not place him by name now?

A. No, I could not. I didn't pay no attention to him at that time is why.

Q. Now as to the ledge; the ledge cropped you say for about a thousand feet?

A. Traced it for a thousand feet.

Q. Well, how far could you trace it above on the hill, above your location monument?

A. Very little.

Q. Very little above your location monument?

A. Yes, sir.

Q. About how far? A. About a hundred feet.

Q. About a hundred feet? A. Yes.

Q. And it cropped right where your location monument was? A. Yes.

Q. How far out of the ground did it crop?

A. Cropped way down past the Mizpah ledge into the Valley View ledge.

(Testimony of Charles J. Carr.)

Q. How far above the surface was the cropping?

A. Sometimes you could not find it, have to dig the dirt to trace it.

Q. Did you trace it with the shovel going along the thousand feet?

A. No, just kicked it off with my foot.

Q. You had good boots? A. Yes.

Q. Did it crop at all above the surface?

A. A little bit, yes; some places it cropped out from the dirt, and some places it would be buried.

Q. I understood you to say in your direct examination that it cropped all along or a thousand feet?

A. It would be buried and crop up again; I said you could trace it for a thousand feet.

Q. It was harder and more substantial rock than the country rock? A. The same character of rock.

Q. The same character of rock as the country rock?

A. Yes sir.

Q. And the country rock is riolite?

A. Riolite with porphyry.

Q. You call it porphyry? A. Porphyry.

Q. Oddie Mountain? A. Oddie Mountain.

Q. You are talking of Oddie Mountain all this time?

A. Yes.

Q. I thought the top of that mountain was riolite and that the porphyry came under that capping?

A. Riolite is porphyry.

Q. That is the way you designate it, is it?

A. Yes.

(Testimony of Charles J. Carr.)

Q. There are two classes of porphyry there?

A. Yes.

Q. What do you designate as the lower porphyry, the ledge country rock porphyry there?

A. There is what they call granite porphyry.

Q. Lava porphyry is a deeper porphyry?

A. Yes.

Q. Is that what you mean? A. Yes.

Q. The one that is capped over is the lava porphyry?

A. Yes.

Q. And what do you call the Oddie mountain, the main mountain?

A. Oddie mountain is a porphyry all by itself, there ain't any other character in it of any porphyry.

Q. What was the highest place above the surface that this ledge cropped, two or three, or four or five feet? A. No.

Q. About how much, give us some idea in feet?

A. Two or three inches.

Q. And how often in that thousand feet would it crop, every twenty-five feet?

A. Oh, yes, about every twelve or fifteen feet.

Q. Every twelve or fifteen feet it would crop?

A. Yes, you could trace it right along by knocking a little dust off.

Q. I mean above the surface where you would not have to scrape off the dust, it would crop every twelve or fifteen feet?

(Testimony of Charles J. Carr.)

A. No, I could not say that; some places it would not crop for twenty or twenty-five feet.

Q. Every twelve feet it would crop, and then every twenty-five or thirty feet?

A. Chances are, yes, something like that.

Q. And it would show mineral all the way?

A. Yes.

Q. And you assayed it, had five assays made?

A. Yes, had five assays made.

Recess until 1:30 P. M.

After Recess.

It is admitted by defendant that the plaintiffs are citizens of the State of California.

It is also admitted that there are no local rules and regulations in the district in which the land in controversy is situated in addition to the requirements of the Congressional Act.

Cross-examination of CHARLES J. CARR (Resumed).

Q. Mr. Carr, will you please mark upon that diagram a point indicating the Mizpah monument that you say was there when you placed those monuments in position? A. How the ledge run, you mean?

Q. Where that Mizpah location monument was that you say was there?

A. It was about right here. (Marks point with figure "10".)

Q. Then that is about due north of the southeast

(Testimony of Charles J. Carr.)

corner of the location you claim as the Lewis Hope location?

A. No, it is southwest, more west.

Q. I say referring to the point 5, which you say is the southeast corner of the Dave Lewis Hope?

A. The southeast corner.

Q. Now, what is the direction from that point 5, the southeast corner of the Dave Lewis Hope?

A. This is the southwest corner.

The COURT.—That is the southeast corner the way you have it there.

A. Yes, that is right. Now, what do you say, Mr. Metson?

Q. Now, have you that number 10 there, knowing that as the southeast corner? A. I think so, yes.

Q. What direction is that Mizpah monument, number 10, from number 5, on that diagram?

A. Well, it is south—no, instead of there, it is west.

The COURT.—Number 5 is at the southeast corner?

A. Yes.

The COURT.—He wants to know what direction that southeast corner post was, and about how far.

A. It was south of this corner.

Q. South of 5? A. Yes.

Q. How far south, in feet?

A. That I could not say.

Q. Approximately?

A. Well, twenty-five or thirty feet, I guess.

(Testimony of Charles J. Carr.)

Q. Describe that point number 10 which you have changed from where you had it first, describe the monument. A. The monument was here.

Q. The Mizpah monument?

A. Well, about here. (Below figure 10.)

Q. Of what was the Mizpah monument constructed in August of 1901; just state to the Court of what it was built, and the size of it, and all about it, as it appeared in August, 1901?

A. It was built of rock and 4 by 4 scantling was put in it with marks on each corner, and the directions.

Q. How high was the monument?

A. From three and a half feet high to four feet at the bottom.

Q. Can you remember any of the marks on the scantling?

A. I know there were marks, but I don't remember of ever reading them.

Q. Now when did you get through this work in this cut that you say you made there on the Dave Lewis Hope locations? A. When did I get through?

Q. Yes? A. Some time in September.

Q. Some time in December? A. September.

Q. After getting through the work in September of 1901 in that cut when did you next go on the ground?

A. When did I next go on the ground?

Q. Yes? In October some time.

Q. October? A. Yes.

(Testimony of Charles J. Carr.)

Q. 1901? Who went with you, anybody?

A. Yes, sir; Mr. Caper went with me.

Q. Who was Mr. Caper?

A. He is a miner and prospector.

Q. Then a resident in Tonopah?

A. He was, yes.

Q. And mining there at that time? A. Yes, sir.

Q. Doing anything else?

A. That is all, he done a little prospecting with me, and he done a little before that.

Q. How many times did he go on the ground with you? A. Once.

Q. And that was in October, 1901? A. Yes.

Q. Did you meet anybody on the trip that day?

A. Not as I remember, I might have met several on the Mizpah ledge, working around there.

Q. Did you go clear to the top of the mountain that day?

A. Just went up to the location work, that was all.

Q. You didn't go above that? A. No.

Q. After that visit with Caper, when did you next go upon the ground?

A. I don't remember of going on the ground till the following May.

Q. Until May, 1902? A. 1902, yes, sir.

Q. And then who went with you, anybody?

A. Yes, sir; there was Mrs. Thompson, Mr. Chandler and his wife, and Mr. Porter and Dave Lewis.

Q. And had you been away from September?

(Testimony of Charles J. Carr.)

A. Yes, sir.

Mr. GOODWIN.—Notice the questions.

Q. Where? A. San Francisco.

Q. Had you been away from September or October, from Tonopah?

A. Why, yes, I was over to Silver Peak several times, and Sodaville several times, in and out.

Q. Had you been away any long trip any place?

A. No.

Q. Where were you in December, 1901?

A. I believe I was in San Francisco.

Q. How long did you stay in San Francisco, the whole month?

A. December, no; I stayed there above five months.

Q. About five weeks? A. Five months.

Q. Then you were in San Francisco December, January, February, March and April, and you went back in May, is that right? A. Yes, sir.

Q. What was the longest time that you spent at Silver Peak after August of 1901?

A. Seven and eight days.

Q. How many trips did you make there?

A. Made several, ten or twelve trips.

Q. Ten or twelve trips? A. Yes, sir.

Q. And would you be off seven or eight days each trip? A. Oh, no; sometimes I would go over there and come back in a day or two.

Q. How far is it over to Silver Peak from Tonopah?

(Testimony of Charles J. Carr.)

A. Thirty-seven miles.

Q. How many trips did you make to Sodaville from August?

A. From August to October?

Q. Yes.

A. I believe I made one, if I ain't mistaken.

Q. Were you in Sodaville in September?

A. Yes, I was there in Sodaville.

Q. Where did you stop, at Bob Stuart's?

A. At Bob Stuart's.

Q. How long were you at Sodaville on that trip?

A. About ten days, I guess.

Q. Were you at Silver Peak in September, 1901?

A. No, I was not; I wasn't in there at all in September—well, yes, I was in September in Silver Peak; I went over to get some prospecting stuff over there.

Q. Were you prospecting or stopping somewheres?

A. I was prospecting.

Q. How long were you on that trip?

A. I could not say, a day or two.

Q. About how long?

A. As long as I went over there and got what stuff I wanted and came back again, three days.

Q. In September of 1901, did you make any trip to Belmont?

A. No; the only trip I went to Belmont was the 16th of May, I remember it well.

Mr. GOODWIN.—The next year, 1902?

A. Yes, sir.

(Testimony of Charles J. Carr.)

Q. You deeded away your interest in that claim, didn't you? A. Yes, sir.

Mr. GOODWIN.—That is incompetent if this is for the purpose of showing a transfer, and is not cross-examination.

The COURT.—It would be competent for fixing the date.

Q. Now, with reference to making any deed of that property, can you tell when you actually did, or the exact date that you left Tonopah?

A. No, sir, I could not.

Q. When you left Tonopah to go to San Francisco, do you remember anybody going with you?

A. The first time I went to San Francisco?

Q. After the location, the first time you went to San Francisco after the location of this Dave Lewis Hope claim.

A. There was nobody ever went with me to San Francisco.

Q. Did you go on the stage from Tonopah to Soda-ville? A. Yes, sir.

Q. In September of 1901, were you at Candelaria or Sodaville?

A. In September or January, did you say?

Q. September of 1901?

A. No, it was away later than that that I was there.

Q. It was later? A. Yes, sir.

Q. When did you first meet Mr. Caper?

(Testimony of Charles J. Carr.)

A. I met him when he first came into the camp.

Q. When was that?

A. Oh, three or four months—let me see, that was about June, I believe; he came in there, in 1901.

Q. Who is Fred Mason?

A. Fred Mason was the foreman of the Fraction mine there, superintendent at least.

Q. Did you go on any of these trips with Mr. Caper?

A. Two trips.

Q. Two trips with him? A. Yes.

Q. What trips were those?

A. Silver Peak, and went over to Lone Mountain to look at a ledge over there.

Q. When was that?

A. That was in September, I believe; no, it was in January.

Q. Of 1902? A. Yes, sir.

Q. Did he go on the stage with you when you left Tonopah to go to San Francisco? A. No, sir.

Q. Was he in Tonopah when you left?

A. He was in Silver Peak when I left.

Q. The trip to Cold Mountain you say was made with Mr. Caper? A. To Lone Mountain.

Q. How many went? A. Three of us.

Q. Who was the other man?

A. Mahoney his name was.

Q. How long did you stay on that trip?

A. About six days, I believe.

(Testimony of Charles J. Carr.)

Q. Didn't you tell me a little while ago that you left and went to San Francisco in December of 1901, and stayed away until May?

A. Well, I went away in December, but I don't know what day in the month it was.

Q. How could you have gone from Tonopah to Lone Mountain with Mr. Caper in January if you left and went to San Francisco in December; that is the only thing bothering me; can you explain that?

A. I got the months mixed up; I cannot recollect the day of the months or the day of the weeks.

Q. I cannot straighten them out, and I wish you would help us on that. You said you left in December of 1901 and went to San Francisco and stayed there until May, and then you went back to Tonopah?

A. What time I left for San Francisco I could not tell you the month or day of the month, or anything else; I remember going away and staying four or five months and coming back in the month of May to do my assessment work; that is all I remember; I don't remember the month I left Tonopah, to tell the truth about it.

Q. That is what you are trying to tell me, the whole truth? A. That is what I am trying to tell.

Q. Had you gone on this trip with Mr. Caper before you went to San Francisco, or afterward?

A. Before I went to San Francisco.

Q. Before you went to San Francisco?

A. Yes, sir.

(Testimony of Charles J. Carr.)

Q. Do you still say this trip to Lone Mountain with Caper was made in January, 1902?

A. I think it was, yes.

Q. And when you went to San Francisco you stayed how many months?

A. I stayed three or four or five months; I can remember coming back in May; went back in May, about the 15th of the month.

Redirect Examination.

Q. This cut that you testified to having made there when you located, or shortly after you located the claim, could the dump of that cut be seen from the town?

A. Yes, sir, very plain.

Q. Very plain? A. Yes, sir.

Q. Now, you said something with reference to taking some steel down; when you said steel, what did you mean? A. Well, drills.

Q. You also said that you got those posts that you made your corners from Lothrop & Davis?

A. Yes, sir.

Q. Is that so? A. Yes, sir.

Q. Did you have an account with them there at the store? A. I did, yes.

Q. Did they sue you on that account?

A. They put an attachment on the claim.

Q. They put an attachment on what claim?

A. On the Dave Lewis Hope claim; they put an attachment on one-half, my half.

Q. They attached that to secure them in what?

(Testimony of Charles J. Carr.)

Mr. METSON.—I suppose the attachment will speak for itself.

Q. For the account that you owed them?

A. Four hundred and eighty dollars, yes, sir.

Q. Did you subsequently pay that off?

A. I did, yes; when I went up there in May, 1902, I paid the debt.

Q. Do you recollect to whom you paid it?

A. Yes, sir.

Q. To whom?

A. I paid it to Jackson, and Jackson gave it to Davis, to Lothrop, I believe it was; it wasn't \$480.00, Jackson had it fixed down for \$380.00.

Q. He got a reduction to \$380.00?

A. He got a reduction to \$380.00.

Q. That is the amount you paid?

A. That is the amount that I paid.

Mr. THOMAS W. CHANDLER, one of the plaintiffs, called and sworn, testified as follows:

Direct Examination by Mr. GOODWIN.

Q. Mr. Chandler, you are one of the plaintiffs here?

A. Yes, sir.

Q. Were you on the ground in dispute in May, 1902?

A. Yes, sir.

Q. Who was there with you?

A. Doctor Porter, Mr. Carr, my wife, David Lewis and Mrs. Thompson.

(Testimony of Thomas W. Chandler.)

Q. Did you go onto the ground, on what was known there as the Dave Lewis Hope claim, or what was understood to be the Dave Lewis Hope claim?

A. I did, yes, sir.

Q. Where did that lay with reference to the town and mountain?

A. It laid on Mount Oddie.

Q. Did it come down the south end of it close to the town? A. One end did, yes, sir.

Q. Well, as it lay there could the surface of this claim be seen readily from the town?

A. The dump could, the dirt there that had been taken out of it could.

Q. You went up to where some work was done, did you? A. I did, yes, sir.

Q. What was the character of that work?

A. Well, it looked to me like a big, and like a square hole.

Q. A square hole run into the side of the mountain?

A. It looked square to me; I am not up in mining. They told me enough work had been done—

The COURT.—Never mind what they told you, just what you saw.

Q. When you were there did you see any attachment papers posted or anything purporting to be an attachment paper posted on the claim?

A. I don't know as I did.

Q. You don't recollect? A. I don't recollect.

(Testimony of Thomas W. Chandler.)

Q. While you were there was any photograph of the side of the mountain in this particular locality taken?

A. Yes, sir.

Q. How were the people stationed in the photograph, if at all? I do not mean now as to the particular locality. Were they all in a bunch or were they scattered in different localities?

Mr. METSON.—Our objection to that is that the photograph is the best evidence, we will make no objection if you produce it.

A. Doctor Porter placed himself at one post, my wife at another, and Mrs. Thompson at another, and Mr. Lewis at another and Mr. Carr at another, and myself at another.

Q. And as you appear in that photograph, if there was a photograph taken, represents your positions at these points does it? A. Yes, sir.

Q. Is that a copy of the photograph that was taken at that time? (Hands photograph to witness.)

A. Yes, sir.

Q. Was Dave Lewis there with you?

A. Yes, sir.

Q. Could you indicate on the picture the point at which Dave Lewis was standing at the time that photograph was taken?

A. Yes, sir. (Indicates on photograph.)

Q. Mark it with the letter "L."

(Witness marks as requested.)

(Testimony of Thomas W. Chandler.)

and could be admissible only on cross-examination, I take it.

The COURT.—I will pursue the same course with it as I have with the others; it will be admitted subject to the objections that may be made.

(Defendant excepts. Exception noted.)

Complainants' Exhibit No. 4.

Hawthorne, November 10, 1902.

Thomas W. Chandler, Esq., San Francisco.

Dear Sir: I am on my way to Tonopah and will refer your letter to the North Star Tunnel Co. In regard to same I will say to you that I consider you bought a gold brick from Chas. Carr, and you are not the only one he gave it to; he gave it to me also. He sold me a lot that he never owned, and we are not the only ones. Dave Lewis located the claim you mention but the assessment work was not done. They let it go, and when Tonopah commenced to look pretty good Lewis sent two men to do the assessment work, I think some time in Feby. We have their affidavits to that effect. But one Ivanpah claim took in all the Dave Lewis claim, which gave us a prior right to any amended location, as there was nothing to amend as Lewis and Carr never done their assessment work. They let it run out. Lewis run a bluff in Feby. to do some and that was the first work that was ever done on the ground on their a/c, that

(Testimony of Thomas W. Chandler.)

part of our matter has always been in the hands of Messrs. Ramsey, Ish and Salisbury, and our attorney has looked into the matter fully, and he tells us that Lewis & Carr has no right in the claim at all. I don't think Carr ever was up on that hill before he come to Tonopah with you, and he can't show where he ever done any assessment work or ever paid for any, and I don't see where you would have a chance in a suit. Mr. Key Pittman is our attorney. You might correspond with him. Now, Mr. Chandler, there are several parties in Tonopah interested in that Co., along with me, and there is not one of them that considers you ever owned any part of that ground, and everybody in Tonopah talked about it the time Carr sold you his interest that he was at his old game. The N. S. Tunnel Co., bought the Ivanpah claim and we will have to protect our interest. I would not have anything to do with it under any consideration unless I considered we were right when we bought it, and I am sure we done everything that the law required since we bought it, with several other claims.

Yours respy.,

FRANK GOLDEN.

Mr. GOODWIN.—It is offered for the purpose of showing an admission on their part as to the location.

Mr. METSON.—I move to strike it out.

The COURT.—I have said I would not pass upon the question at the present time. There are a great many

(Testimony of Thomas W. Chandler.)

questions raised, and when you come to submit the case they are of no importance whatever. You have saved your exception.

(Letter admitted in evidence and marked Complainants' Exhibit No. 4.)

Cross-examination by Mr. METSON.

Q. You say that Lewis was on the ground the day that this photograph was taken? A. Yes, sir.

Q. And you say that he was placed at some particular corner? A. Yes, sir.

Q. Could you designate on that plat made by Mr. Carr what corner Mr. Lewis occupied?

A. About, I think I could.

Q. Please do so.

(Witness goes to blackboard.)

A. I stood here, do you want how everybody stood, or where Lewis stood.

Q. Where Lewis stood?

A. He stood off about here I think, to the best of my knowledge. (Point marked on map "11".)

Q. That is a point midway between the point 3 and the point 8?

A. Yes, sir, I should think so. No, that is wrong, excuse me, I was close to the base here; I stood about here I should judge, and Lewis would be off about here, I took it too high up. (Remarks point on plat.)

Q. Now, you have changed the point 11 to a place north of the point 8.

(Testimony of Thomas W. Chandler.)

A. I think that is about it, sir.

Q. Is that correct?

A. Yes, I could point out on the picture where he stood.

Q. I am asking you on the plat.

A. I think that is about right.

Q. About how far north of the point 8 is the point 11, on the ground?

A. I could not tell you, sir; I have no idea how far.

Q. Could you approximate it?

A. I didn't go over all the points when I was there; I didn't go to all the posts; all I went to was that pole, and where I stood when the picture was taken.

Q. To the pole and where you stood when the picture was taken?

A. That is all, and the position my wife and folks were in the day it was taken.

Q. You didn't go to the places where they were, you took your own stand and stayed there? A. Yes.

Q. And you could not see what the points were where they stood? A. No, sir.

MARTIN CAPER, a witness called and sworn on behalf of the plaintiffs, testified as follows:

Direct Examination by Mr. GOODWIN.

Q. Mr. Caper, where do you reside?

A. I live in Nevada for the last five years.

Q. Were you in Tonopah in the year 1901?

(Testimony of Martin Caper.)

A. Yes, sir.

Q. What portion of that year?

A. About in June I came to Tonopah, in about June, 1901.

Q. How long did you stay there?

A. I stayed there a whole year.

Q. The whole year? A. Yes, sir.

Q. Were you acquainted with Charles Carr while you were in Tonopah? A. Yes, sir.

Q. In the fall of 1901 did you hear of Carr and Lewis having a location up there on the mountain?

A. Yes, sir; Carr wanted me to go up there, he thought there was a piece of ground—

Q. Don't say what he said. You heard around town that they had a location up there on the hill, didn't you?

A. Yes.

Q. It was generally understood there that Carr and Lewis had a location up there on the mountain, wasn't it? A. Yes, sir.

Q. Did you go up on the hill there with Carr?

A. Yes, sir, I went up there.

Q. When was it?

A. It was some time in October, I don't know what date it was.

Q. Of what year? A. 1901.

Q. Do you know where the North Star hoisting works are now, the present shaft?

A. Yes, sir; I see it, but I have never been up there.

(Testimony of Martin Caper.)

Q. Where did you go with Mr. Carr on that ground with reference to that shaft, or those hoisting works?

A. Well, I don't know exactly; it is close there, somewhere on the side of the hill.

Q. On the side of the hill close there somewhere?

A. Yes.

Q. What did you see there?

A. I see they had a cut there, and he ask me what I think of his ground there, his claim, I told him it is—

Mr. METSON.—We object to what he told him.

Q. You say you saw a cut there, describe that cut to the Court so he will understand it.

A. There was a cut I think about 15 feet long, and the face was about 10 feet.

Q. The face you mean the front?

A. The front, yes, next to the hill.

Q. How wide was it?

A. About 4 feet to 4½ feet.

Q. In that cut at any point state to the Court whether or not there was any vein exposed?

A. Yes, there was a small ledge, about 6 or 7 inches of ledge he had there, quartz.

Q. Did it show plainly that it was a vein?

A. Yes, it was of quartz.

Q. Did you see any monument or stake around there anywhere?

A. I see the monument a few feet above his cut up there.

(Testimony of Martin Caper.)

Q. That is on the side above the cut, you saw a monument? A. Yes, above, right above his cut.

Q. How close to the cut?

A. Three or four feet, somewhere there.

Q. Was there any notice there at that monument?

A. He had some paper out of the can, and he read it; I was on the cut at that time, and when I went in there I see his name and Lewis, on the paper.

Q. You saw him take the paper out of the can?

A. Yes, sir.

Q. What did he do with that paper?

A. Put it back in the monument again.

Q. Could you see from the town of Tonopah this cut and dump?

A. Yes, sir, I could see from the town.

Q. After you had been up there and gone back to Tonopah, did you ever notice it?

A. Yes, I noticed it from the town.

Q. It could be plainly seen, could it?

A. You could see the dump.

Q. How far was it to the town, approximately, from this cut?

A. Quite a ways, I could not tell exactly how far, it was on the side of the hill, pretty much to the top.

Q. Pretty well towards the top? A. Yes.

Cross-examination by Mr. PITTMAN.

Q. When you came to Tonopah, Mr. Caper, where did you come from? A. Bodie.

Q. What were you doing in Bodie?

(Testimony of Martin Caper.)

A. Working in mining.

Q. What mine? A. Standard mine.

Q. How long did you work in the Standard mine?

A. About a year.

Q. What have you been doing in Nevada?

A. Working, drilling, and working in mines.

Q. As a driller? A. Yes.

Q. When was the first time you met Mr. Carr?

A. Met him in June, in 1901.

Q. Where did you met him?

A. Met him in Tonopah.

Q. Was he mining at the time?

A. He was prospecting.

Q. He was prospecting?

A. Yes, he was prospecting; he told me he was leasing and prospecting.

Q. What was the first job that you did after coming to Tonopah? A. I went to prospecting around.

Q. Where did you prospect?

A. All around Tonopah.

Q. All around Tonopah? A. Yes.

Q. Which direction, north, south, east and west?

A. North, south, east and everywhere.

Q. Did you locate any claims? A. Yes, sir.

Q. What claims did you locate?

A. Claims down west from Tonopah, what Charlie Young has.

Q. Did you do any work on it?

A. I did a little work; I didn't claim it because I

(Testimony of Martin Caper.)

didn't do my location work, and didn't have them recorded, so I lost it.

Q. When did you locate those claims?

A. I located them claims in 1901, I think in the fall.

Q. In the fall of 1901? A. Yes.

Q. How many claims did you locate?

A. I located three.

Q. Did you locate any other claims in the district?

A. Well, I located some on Gold Mountain there with several parties, that is with partners, but I just put the notice on and never done the work on them.

Q. You never did any work on them? A. No.

Q. After you got through prospecting, what did you do?

A. I been working in the mines for wages.

Q. What mine? A. Mizpah ledge.

Q. For whom? A. Mr. Sullivan.

Q. For Sullivan and Lynch? A. Yes.

Q. How long did you work for them?

A. Three months at one time, and another time about two months, and so on.

Q. When did you commence to work for them?

A. I worked for them about in 1901, some time in the fall.

Q. Was it before or after you went up the hill with Mr. Carr? A. I was working at that time.

Q. Where were you working?

A. In the Mizpah ledge.

Q. At the time you went up there? A. Yes, sir.

(Testimony of Martin Caper.)

Q. Was it in the morning or evening that you went up there? A. In the evening.

Q. In the evening? A. Yes.

Q. What time in the evening?

A. I don't know; I think it was about two or three o'clock, somewhere.

Q. Two or three o'clock? A. Yes.

Q. How long were you up there?

A. I just went up there and stayed about an hour or so.

Q. About how long? A. About one hour.

Q. Where did you spend the one hour?

A. I was looking around; looked at his holes there, and what he has been working, and looked around to see if I could not locate some ground for myself.

Q. Did you find any ground? A. No.

Q. Did you go up above the hole?

A. Yes; there was a post there on that in November.

Q. How far up above the hole did you go?

A. About a hundred feet or so.

Q. A hundred feet or so above the hole?

A. Yes.

Q. Wasn't that up out of the side lines of the Lewis Hope claim? A. I don't know.

Q. Did you know what this hole was that you went to? A. Yes.

Q. What was it? A. It was his location.

Q. How far would the side lines be from the location? A. What do you mean by "how far"?

(Testimony of Martin Caper.)

Q. Do you understand the question?

A. No, sir; I do not.

Q. How far on each side of your location hole do you claim generally as a miner, when you locate a claim?

A. I do not understand what you mean.

Q. How wide is the claim?

A. Six hundred feet wide.

Q. How wide on each side of the claim?

A. Three hundred feet on each side.

Q. Was this cut on the vein?

A. This cut was on the vein.

Q. How far did you have to go to get outside of this claim?

A. Well, his cut was crosscut; he crosscut the vein.

Q. How far would you have to go from the center of that vein to get outside of the claim?

A. Well, I could not tell exactly how far you would have to go to get outside of his claim; I didn't know where his monuments was.

Q. Did you ask him where his monuments were?

A. Yes; I asked him if that was his monuments what was up there.

Q. Did you go outside of his monuments?

A. Yes, sir.

Q. And you only went a hundred feet above the hole?

A. About a hundred feet above the monument.

Q. What claim was above that claim?

A. Well, he claims it himself.

(Testimony of Martin Caper.)

Q. What claim was above that claim; was there any other claim located on that hill?

A. Well, several parties in there had claims; I could not tell exactly who was next to him.

Q. You could not tell exactly who was next to him?

A. No.

Q. Was there somebody next to him?

A. Well, the Mizpah ledge was below it.

Q. You didn't look for anything below it, did you?

A. No.

Q. What did you find above it?

A. Just walked up above it on the side there.

Q. Did Mr. Carr go up with you?

A. No, he stayed there by the monuments and read his notice.

Q. Did Mr. Carr go up the hill with you from that cut? A. No, sir.

Q. He did not? A. No.

Q. Did Mr. Carr take you up to show you some vacant ground? A. Yes.

Q. Why didn't he go up with you?

A. He showed me there was a piece in there, and I went around myself in there, and he says it was a small piece, so I thought I would not bother with it.

Q. Did you find any vacant ground? A. No, sir.

Q. You didn't find it? A. No.

Q. Did you look for it?

A. I thought that was vacant there, I wasn't sure it was vacant or not, the monument was all around there;

(Testimony of Martin Caper.)

he says it was vacant, but I wasn't sure it was vacant or not; he told me it was vacant.

Q. Did you look to see whether it was vacant?

A. No, I did not.

Q. You did not? A. No.

Q. You were not very anxious to get a claim, were you?

A. Well, I was anxious to get a claim; yes, I was.

Q. You went up there solely to get a claim, didn't you? A. Yes.

Q. Now did you see a single, solitary claim located above this one that Mr. Carr claims? A. No.

Q. How long did you stand upon this hundred feet point above the cut, how long did you stand there?

A. I didn't stay very long; I don't know how long; stayed a few minutes.

Q. Did Carr stay down in the cut while you stayed up there? A. Yes.

Q. Then you came down?

A. I didn't stay in one place; I was walking around, and he stayed by his monuments.

Q. What was he doing?

A. Staying there, reading his notice or paper that he had.

Q. Staying there reading his notice for an hour?

A. I don't know an hour; he was staying there waiting for me.

Q. Was it when you came back, or went up the hill, that he took this notice out of the can?

(Testimony of Martin Caper.)

A. He took the notice out of the can when I was there, before I went up the hill.

Q. Just as soon as you got there?

A. Yes, as soon as I got there.

Q. Now, as a matter of fact, didn't he take you up there as a witness, and not to get a claim?

A. He didn't tell me that he took me for a witness; he told me to come up there and see his ground, what he had located, and see his claim.

Q. Did you look at this notice?

A. Yes, I was looking at it.

Q. Did you read it?

A. Didn't read it; could see his name on it.

Q. Did you try to read it?

A. I tried to read it; I could see it was his name and Charlie Carr, Lewis and Charlie Carr on the lower part of the notice.

Q. Was it written "Carr and Lewis," or "Charlie Carr?"

A. Charlie Carr was the name on it, and Lewis.

Q. Which was first?

A. Well, I don't know exactly which was the first, but I know it was two names.

Q. Was that all you saw? A. Yes.

Q. That is all you saw? A. Yes.

Q. You are positive about the names signed to that, are you? A. Yes, sir.

Q. Have you ever seen that notice since you came here? A. No, sir.

(Testimony of Martin Caper.)

Q. Haven't these gentlemen here, the attorneys, showed you a copy of that notice? A. No, sir.

Q. They have not? A. No, sir.

Q. Which name was on there first?

A. I could not say which was the first, whether it was Lewis or Carr, but I know there was two names on it, Lewis and Carr.

Q. Was it signed "Charlie Carr?" A. Yes, sir.

Q. Was it "Carr" or "Corr?"

A. I could not tell you.

Mr. GOODWIN.—I think this has gone far enough, and I object on the ground it is immaterial and purposeless; no man could be presumed to testify to such details.

The COURT.—I am inclined to think the witness has been answering you the best he could.

Q. I would like to ask this question, whether the name was Charlie Carr, whether he remembers?

A. I remember it was Carr; there was Carr, I remember Carr and Lewis, I remember that.

Q. You don't remember the first names of either one of them, do you? A. No, sir.

Q. You do not? A. No, sir.

Q. And that is all that you saw of the notice?

A. Yes.

Q. What kind of a can was this in, this notice?

A. It was a small can; I could not tell, but it was a little can, looked like an oyster can more than anything else.

(Testimony of Martin Caper.)

Q. Did he have to dig it out of the rocks?

A. Pulled the rock out; it was put in a hole there in the rocks.

Q. Did you go up to this monument? A. Yes.

Q. Was Mr. Carr sitting down beside it when you went up there? A. What?

Q. Which side of the cut was this monument on?

A. It was above the cut a little ways, probably three or four feet.

Q. What was the character of the ground?

A. Porphyry formation.

Q. Was there much slide rock there?

A. I don't know; I know it was lime and porphyry; that is all I know what was there; I could see lime and porphyry.

Q. Lime and porphyry? A. Yes.

Q. How was this; was this on the hog back or in a gulley, or how?

A. Well, there was not very soft ground in there, it was very hard; pretty soft on top, but down at the bottom it was hard.

Q. What did this vein look like?

A. It was quartz.

Q. Which way did it dip?

A. I think it was dipping pretty near to the east, not quite.

Q. What angle was it standing, straight or to the east?

A. Not quite; pretty near perpendicular.

(Testimony of Martin Caper.)

Q. Pretty near perpendicular? A. Yes.

Q. Was this vein cropping on the surface?

A. I didn't notice whether it cropped any on the surface or not.

Q. How far did it go through it?

A. Well, I went around for probably a hundred or two feet, all around.

Q. No, how far did this crosscut run through the vein? A. About fifteen feet, I think.

Q. How far from where the crosscut was started to where it encountered the vein?

A. It was about six or seven feet.

Q. Then the crosscut extended how many feet past the vein? A. Well, about seven feet.

(Q. About seven feet? A. Yes.

Q. Then the crosscut, as I understand it, went straight through the vein? A. Yes.

Q. It was cut in two?

A. Yes, cut in two.

Q. And seven feet beyond the vein? A. Yes.

Q. Was the hill steep at that point?

A. Pretty steep.

Q. Pretty steep ground? A. Yes.

Q. And this crosscut started right in and gradually got deeper? A. Yes, got deeper.

Q. How high would you say the face of this crosscut was? A. I think about ten feet.

Q. About ten feet high? A. Yes.

Q. From where it stopped? A. Yes.

(Testimony of Martin Caper.)

Q. What kind of a monument did they have there, a location monument?

A. Well, I saw some little brush around the rocks, rocks and little scantlings inside of the rocks, scantling put in the center of it.

Q. What size scantling?

A. I think 3 by 4, something like that.

Q. Any marks on it?

A. I didn't notice whether it was marked or not.

Q. You didn't notice whether there were any marks on there or not? A. No.

Q. How high was this rock monument?

A. I think it was about three feet or three feet and a half.

Q. How big at the base?

A. At the bottom?

Q. Yes. A. About four feet.

Q. When you got up there did this work look like it was fresh work in that cut?

A. I don't know whether it was first work or last work; Carr told me that he was done, and that he took his tools out of there; he says his work is done, and took his tools out of there.

Q. What did the tools consist of?

A. He had a few drills there.

Q. What else? A. Pick and shovel.

Q. What else? A. I don't know anything else.

Q. Did he have any single jack or double jack?

(Testimony of Martin Caper.)

A. Single hand hammer and a crow-bar.

Q. How many drills did he have?

A. I don't know exactly how many. I should think—I don't know exactly how many, it was half a dozen anyway.

Q. Did he have any powder or fuse or caps left?

A. I didn't notice what he had; no, I don't think.

Q. You don't think? A. No.

Q. In coming down the hill where did you come first, what point did you come to first?

A. I went right straight down, and he went with the tools to the place, says he is going to take the tools where they belonged, where he got it, and I don't know what he did.

Q. You didn't help him take the tools down?

A. No, sir, I did not.

Q. Did he take all the tools away at that time?

A. He took all the tools himself.

Q. All the tools himself? A. Yes.

Q. That is, half a dozen drills and a hammer and a crow-bar and pick and shovel? A. Yes.

Q. He took them all away and said he was going to take them where they belonged?

A. Yes, going to take them where he got them.

Q. Where did you go?

A. I went to town.

Q. Did you go back up there to look for ground any more? A. No, sir.

(Testimony of Martin Caper.)

Q. That is the last time you went up there?

A. That is the last time I went up there.

Q. Did you hear of anyone else owning any claim upon that hill?

A. There was lots of people came in gone up there, I know went over the hills to look at the ground. I don't know who they was or what it was for, or anything

Q. You have testified in answer to a direct question by Mr. Goodwin that you had heard that Carr and Lewis owned a claim up there, have you not?

A. Yes.

Q. Who else did you hear owned a claim up there?

A. I didn't hear anybody else.

Q. You didn't hear anybody else? A. No.

Q. What did you do after your trip up there, where did you go then? A. I went to town.

Q. You went to town? A. Yes.

Q. Did you go to work then?

A. I went to work that night.

Q. You went to work that night? A. Yes.

Q. Did you work steadily, or off and on, odd times?

A. Sometime I worked two or three months, and then I lay off and prospect, and then work again two or three months, and so on; I didn't work steady all the time.

Q. You had a prospecting trip with Mr. Carr, did you not? A. Yes, I did.

Q. Whereabouts, where did you go?

(Testimony of Martin Caper.)

A. Went to Silver Peak with him.

Q. How long were you down there?

A. I think we stayed there about five or six days.

Q. Did you locate anything?

A. Yes, sir, we located some ground there.

Q. I suppose you have got that now?

A. No, we have not got it, because we didn't do the work on it.

Q. You and Carr don't seem to have been very good at doing work?

A. Well, it wasn't very rich for us, and we thought we didn't care for it, wasn't good enough to do the work, the assessment.

Q. How good was it?

Mr. GOODWIN.—I object to that as entirely irrelevant and immaterial.

Q. You went out to Lone Mountain also, did you, on a prospecting trip? A. Yes.

Q. What month was that in?

A. I think it was about in January.

Q. In January? A. Yes.

Q. Can you fix in your mind what time in January that was?

A. Well, it was 1901, in January, I think.

Q. You don't mean January, 1901, you mean 1902, don't you? A. 1902, that is it.

Q. How long were you on this trip?

A. About five or six days.

(Testimony of Martin Caper.)

Q. Did you locate any claims on this trip?

A. No, sir.

Mr. GOODWIN.—I object to this as not cross-examination of anything brought out by us, I cannot see the point to it. I am not disposed to make any objection to anything that counsel thinks is material, but I cannot see any materiality to this.

The COURT.—I understand the object, but I think you have gone far enough.

Q. Mr. Caper, when is the first time since going up to this cut with Mr. Carr that you have discussed that trip with anyone?

A. You mean when I went up to that cut?

Q. Since coming down, when is the first time that you have discussed the facts that you have testified in regard to it with anybody?

Mr. GOODWIN.—What he means, Mr. Caper, is, when did you first tell anybody, after you had gone up there with Mr. Carr, and went back, when did you first tell anybody that you had been up there with Mr. Carr and had seen this cut.

A. I don't know, I told several parties, and I don't remember what I did tell.

Q. You don't remember the first time that you told anything about it?

A. No, sir; all I remember, I was up there and seen it.

(Testimony of Martin Caper.)

Q. Have you ever discussed what you would testify in this case with Mr. Goodwin, the attorney here?

A. I don't understand what you mean.

Q. Mr. Caper, when did you first tell any of these gentlemen what you knew about this case?

A. No, sir.

Q. When did you; you never did? A. No, sir.

Q. Did you ever tell Mr. Goodwin before coming on this stand that you had been upon the hill with Charlie Carr? A. Yes, sir; I told him.

Q. When? A. I told him to-day.

Q. To-day? A. Yes.

Q. That is the first time?

A. The first time, yes.

Q. Did you ever tell Mr. Duryee, the gentlemen sitting at the end of this table, what you knew about this case? A. No, sir.

Q. You never did? A. No, sir.

Q. When were you subpoenaed in this case?

Mr. GOODWIN.—We will admit that he was subpoenaed this morning.

The COURT.—When did you get the paper; when did the officers serve a paper on you telling you to come into court?

A. Well, it was about a couple of weeks ago; I met Charlie Carr and he told me that he lost that claim what he had done his work on.

Q. Told you what?

(Testimony of Martin Caper.)

A. Told me that he had lost that claim what he was working on.

Q. He lost that claim?

A. Lost that, and I ask how he lost it, and he says the party jump him.

Q. Where was this conversation?

A. That was in San Francisco.

Q. In San Francisco? A. Yes.

Q. Did he take you to see his attorneys there?

A. No, sir.

Q. He did not? A. No.

Q. When was the paper served on you to come into this court? A. To-day.

Q. To-day? A. Yes, sir.

Q. When did you get to Carson? A. To-day.

Q. Where did you come from?

A. San Francisco.

Q. Did you get on the train at San Francisco to come here? A. I got onto the boat first.

Q. Were you coming to Carson? A. Yes, sir.

Q. For this trial? A. Yes.

Q. Mr. Caper, how do you remember that it was in the month of January that you went to Silver Peak, did you make a memorandum of it?

A. I know it was. I am sure of it because it was after Christmas.

Q. It was after Christmas?

A. We went down to Silver Peak.

Q. It could not have been in February, could it?

(Testimony of Martin Caper.)

A. No, sir.

Q. It could not have been in February?

A. No, sir, because in February I was working in the mines there for John Chiatovich.

Q. How do you know it was in October that you went up on the hill with Mr. Carr?

A. Well, I was prospecting around in November, I am sure it was. I was sure it was in October that I was on the hill, because I stayed in Tonopah only a few months, and then I was to go to the mountains a few days again, that is in November, so I was pretty sure it was in October.

Q. You were out of town in November part of the time?

A. Part of the times, yes, a few days I was, and then I went away.

Q. Is it not possible that this could have been in December? A. No.

Q. It is not possible? A. No.

Q. You never made any memorandum of it, did you?

A. No.

Mr. CHARLES J. YOUNG, called and sworn on behalf of the plaintiffs, testified as follows:

Direct Examination by Mr. GOODWIN.

Q. Where do you reside, Mr. Young?

A. In Tonopah.

Q. How long have you been there?

(Testimony of Charles J. Young.)

A. Since 1901.

Q. Since what time in 1901?

A. The 6th of October.

Q. The 6th of October, 1901? A. Yes, sir.

Q. Were you acquainted at that time with Charlie Carr and Dave Lewis?

A. I knew Carr and his brothers years before that in San Francisco, and Lewis I never knew until I went to Tonopah.

Q. At that time did you hear it rumored around there that Carr and Lewis had a claim located upon the side of the mountain there?

Mr. METSON.—I object to the rumor, it is hearsay and incompetent.

The COURT.—I think it is as near the point as some of the questions that have been asked; I will take it for what it is worth.

(Question read.)

A. You mean at that particular date?

Q. No, early after you got into Tonopah, you say you went there October 6th, 1901?

A. Yes, sir; there was an instance happened that memorized it to me that Lewis was interested in a claim upon the hill with Carr.

Q. When was that?

A. That was along in about somewheres in the neighborhood of the 15th of October, when I moved into

(Testimony of Charles J. Young.)

the building where the Frisco store now stands on Main street.

Q. What was that incident?

Mr. METSON.—The same objection.

The COURT.—I do not know what it is. I do not know whether it has any relevancy or not, if it has not it will not be considered by the Court.

Q. Did that incident have reference to Carr and Lewis, and their location?

Mr. METSON.—If he gives hearsay testimony, I insist on my objection.

The COURT.—If it is hearsay the Court will not consider it.

(Question read.)

A. Yes.

Q. What was it?

A. Why, about that time I moved from Tom Kendall's saloon, the station I had there, a lunch counter, and opened up a tent at this point, and I needed a shovel and pick, and didn't have any money to buy one, so I had to borrow one, and I sent Wise out to borrow one, and he borrowed one, and it came from—I didn't know at the time, but Lewis came the next day wanting his pick and shovel, and we didn't have his pick but had his shovel, however, and I asked him if he could not let it be there for a while, and he said no.

(Testimony of Charles J. Young.)

Mr. METSON.—I object on the ground it is hearsay.

(Objection sustained.)

Q. Did you ever go upon the hill there where the Carr and Lewis location is situated, up northeast of Tonopah?

A. I was never up there on that location until along in the latter part of December and January, when I was looking for some fractions.

Q. December, 1901, and January, 1902?

A. Both those, yes.

Q. You were up in that neighborhood then?

A. Yes, sir.

Q. Did you see any work there at that time that was claimed to have been done by Carr or Lewis?

Mr. METSON.—I object to that.

The COURT.—Was there any work at a certain point?

Q. Just a moment. Do you know where the North Star shaft is now situated?

A. Well, I know about where it is.

Q. When you were up there on the mountain in December, 1901, or January, 1902, did you see any evidence of any work having been done near the point, or approximately near the point?

A. Where the shaft is now?

Q. Yes.

A. I could not say exactly where the shaft is, because I had no interest to locate the shaft in its present position, but in that cave there was some work done

(Testimony of Charles J. Young.)

on the side of that hill, and which is the base of the point of the mountain going around to Golden's tunnel; of course I had a point to follow, that reef of riolite cropping down, and I was close to it, three hundred feet, not closer than three hundred feet, but close to that some excavation was made. Who did it I don't know.

Q. What did it look like, a cut run in there and a dump thrown out?

A. There was a dump like somebody had been digging a hole and thrown the dirt out; didn't seem like a cut to me, it was an embankment.

Q. In the fall of 1901 did you ever see Carr or Lewis working up there on the side of the mountain?

A. I never seen either of them work up there. I don't know who was working in the cut. I was up there one day and some stuff was coming down the hill. I don't know who was up in the hole.

Q. You don't know who was doing it? A. No.

Cross-examination by Mr. METSON.

Q. It was in December, 1901, that you saw that dump, was it?

A. That was the first time I was close up so I could recognize it was a dump, and that a dump was there on that ground on the side of the hill; that is, up above the Montana now, where the Montana shaft is.

Q. That was in December, 1901, or January, 1902?

A. It was along in the latter part of the month, or

(Testimony of Charles J. Young.)

about the first of January; it was along in the sickness, that time.

Q. How close to that dump were you?

A. In the neighborhood of 250 feet to 300 feet.

Q. Below it? A. Below it; yes, sir.

Q. You could not tell whether it was a cut, shaft or incline from where you were? A. No, sir.

Q. But you could see the dump?

A. Yes, sir; that is, I could see where some one had excavated fresh earth out of it and thrown it up, it was then over the surface formation.

Q. The same dump exists there now?

A. There is a riolite dyke coming down there and crossing into the hill, Mount Oddie; I was tracing that down and down into my ground where I had my cabin, locating the strike or trend of the Mizpah ledge, and it was 200 feet below this point of this dump where I was.

Q. Could you tell about what time in December was the first time you noticed that?

A. If I knew what time my friend died here I could tell you, Fred Knutz died, but I don't know.

Q. Could you say it was the middle or last part of December?

A. The latter part of December, and in January I was looking for some fractions up in there, and I located, or I got in line, the Black Mascot, adjoining Mr. Oddie's "Bob Tail" and the "Sand Grass" of the company; I had that picked out, and I understood there

(Testimony of Charles J. Young.)

was some fractions upon the Mizpah, and that took me upon the ground.

Q. This dump that you saw in December or January, could that be seen from town?

A. Yes, you could see that; a person looking could see it was going towards the point of the mountain, the northwest point of the mountain.

Q. Going towards the northwest point of the mountain?

A. Yes, it would be, looking that way towards the northwest point of the mountain.

Redirect Examination.

Q. Did I understand you to say that you never saw either Lewis or Carr going up towards this place to work?

A. No, I didn't say that; I said I didn't see either of them working on this portion of the ground.

Q. Neither of them working on the ground?

A. Yes.

Q. Did you see either of them at any time leave your presence or did either of them ever leave your presence with a pick and shovel going towards this ground?

A. When I gave Lewis the shovel he said he was going to do this—

Mr. METSON.—I object to what he said.

The COURT.—Did he go in that direction?

A. Well, he went over across the street, went away from me.

Doctor JEROME P. PORTER, one of the plaintiffs, called and sworn, testified as follows:

Direct Examination by Mr. GOODWIN.

Q. Have you ever been in Tonopah? A. I have.

Q. When did you first go there?

A. In the month of November, 1901.

Q. You are one of the plaintiffs in this action?

A. Yes, sir.

Q. While in Tonopah in the month of November, 1901, did you go out on the mountain east of Tonopah, where the land in question is situated? A. I did.

Q. Were you on the ground that subsequently you ascertained was the ground which is included within what we claim to be the Dave Lewis Hope mining claim?

A. I was.

Q. While on this ground at that time in November, 1901, did you see any cut? A. I did.

Q. Do you know now where the North Star shaft is situated on that same tract of ground? A. I do.

Q. Where was the cut that you then saw situated with reference to the present North Star shaft?

A. Just a little north of it.

Q. Did you pay any particular attention to the cut at that time? A. No, not particularly.

Q. Were you on the ground after that at any time?

A. Yes, the next spring.

Q. What time the next spring?

A. The month of April.

(Testimony of Dr. Jerome P. Porter.)

Q. Could you give the day?

A. Well, it was in the latter part of the month.

Q. That would be in April, 1902? A. Yes.

Q. With whom did you go on the ground?

A. Dave Lewis.

Q. Did you and Dave Lewis go up to this cut that you had seen the fall before? A. Yes, sir.

Q. It was still there? A. Yes.

Q. At that time, or shortly after that time, did you become interested in that location? A. I did.

Q. Were you on the ground in the month of May?

A. I was.

Q. Say from the middle of May to the 17th of May following? A. Yes, sir.

Q. State to the Court what you did, if anything with reference to working that claim at that time, and with reference to this particular cut?

A. Well, at that time I had a bond on this claim, and I heard that some assessment work had been done for that year, but I wanted to be sure, and I did a hundred dollars' worth of work and more, myself, in this particular cut.

Q. Just answer my questions, Mr. Porter, please. What work did you do there at that time, or cause to be done at that time, with reference to this particular cut?

A. Well, I enlarged it.

Q. You enlarged it, how do you mean?

A. The cut then was four and a half feet wide, and I enlarged it to about fourteen feet wide, and cut a large adit in the hill.

(Testimony of Dr. Jerome P. Porter.)

Q. In other words, you carried that cut into the hill 14 feet wide? A. 14 feet wide, and carried it right in.

Q. Did you do anything with reference to sinking any shaft at that point? A. Yes.

Q. What did you do?

A. In running this cut, of course the vein that was there was exposed pretty close to the center of this adit; the vein was exposed along the center of this adit, and there I sunk a prospecting shaft 5 by 8 in the clear.

Q. Did you have any photograph made of that cut and the vein exposed at that time?

A. Well, prior to my work.

Q. That is prior to that work? A. Yes.

Q. State to the court whether or not that is a copy of the photograph that was taken of that cut? (Hands photograph to witness.)

A. That is a copy.

Q. Who is present there in the picture?

A. Myself and Mr. Vaughn, a man that I had working for me.

Q. State whether or not what you term the vein or ledge is represented in that photograph?

A. The vein is represented by that dark streak that runs right down there, of quartz.

Q. Now, that photograph represents that cut as you found it there before you had done any work enlarging it, or sinking this shaft that you speak of? A. Yes, sir.

Mr. GOODWIN.—We will offer this photograph in evi-

(Testimony of Dr. Jerome P. Porter.)

dence as Plaintiffs' Exhibit No. 5. (Photograph admitted, without objection, and marked Plaintiff's Exhibit No. 5.)

Q. In addition to the work that is represented by that cut there, what was the value of the work that you caused to be done at that time?

A. Well, I did more than a hundred dollars' worth of work, in money expended, then the labor that I performed myself; I handled a pick and shovel myself, to a certain extent.

Q. In other words, you paid out more than a hundred dollars in money for the labor that you had done, besides working there yourself?

A. Yes, sir.

Q. And that labor was in enlarging this cut to 14 feet?

A. Fourteen to sixteen feet, a pretty large cut.

Q. And sinking this shaft 5 by 8 in the clear?

A. Five by eight in the clear.

Q. And how deep?

A. About 7 to 8 feet deep from the bottom of the cut

Q. From the floor of the cut it was 7 or 8 feet deep?

A. Seven feet or so, I didn't measure it.

Q. Was that shaft sunk on the ledge?

A. Right on this vein that shows in the photograph, the vein of quartz; the vein of quartz was right in the center of the shaft.

Q. Was Dave Lewis with you at that time?

A. Yes, he was with me all of the time.

Q. Was he with you at the time that you first went out there and these photographs were taken, before you did your work, did he go onto the ground with you?

(Testimony of Dr. Jerome P. Porter.)

A. Yes, sir, I have his photograph in one of these which will be presented later.

Q. Just answer my questions, please?

A. He was with me, yes.

Q. Did he show you what purported to be or what he claimed to be the stake representing the south center of the Dave Lewis Hope claim? A. Yes, sir.

Mr. METSON.—I object to that on the ground it is hearsay and incompetent.

The COURT.—Not what Lewis told him, but what he saw and where he saw it.

Mr. GOODWIN.—I asked him did Lewis point out to him a stake, which Lewis represented to be a certain stake.

The COURT.—I will allow it. Defendant excepts.

Q. Where was that stake with reference to the Mizpah ground, was it near the Mizpah?

A. Well, it was practically on the Mizpah ground.

Q. It was practically on the Mizpah ground?

A. It was on the Mizpah ground.

Q. Referring to this diagram that has been testified to by several parties, specifying this as north, towards the top of the board, and west is towards the left hand, and east to the right, and south towards the bottom of the board; what point or figure there would represent what he pointed out to you as being the south center line of the Dave Lewis Hope?

(Testimony of Dr. Jerome P. Porter.)

Mr. METSON.—I suppose we have the same objection to that?

The COURT.—Yes, and I will allow him to answer.

A. This is what represents the south center post of the Dave Lewis Hope, which he pointed out to me as being the south center post of the Dave Lewis Hope. (Indicates point 8 on plat.)

Q. By the 17th of May had you acquired an interest in this Dave Lewis Hope claim? A. Yes, sir.

Q. On the 17th of May did you make a corrected location of the Dave Lewis Hope claim?

A. I made an amended location.

Q. Where was the south center post of the amended location placed with reference to the south center of the Dave Lewis Hope, as pointed out to you by Dave Lewis?

A. We didn't move it, we left it where it was, didn't change it.

Q. You didn't change it?

A. No, we didn't change it.

Q. Prior to that time had Lewis taken you around the exterior boundaries of the Dave Lewis Hope claim?

A. Yes, sir.

Q. State to the Court what you found at the different corners, taking the northeast corner, the north center, the southeast corner, and the east center side line.

A. Dave Lewis took me to these corners and showed me mounds of rock placed there he said by himself.

(Testimony of Dr. Jerome P. Porter.)

The COURT.—Never mind what he said, just what you found there.

A. In these mounds of rock were posts and tin cans.

Q. Did he take you to what he represented to be the south center of his claim?

A. Yes, sir, he did that the first thing.

Q. What did you find there?

A. A post there in a mound of rock, and a tin can.

Q. Did he take you to what he represented to be the southeast corner of the claim, and approximately what distance was that from the south center?

A. Three hundred feet.

Q. Approximately? A. Yes.

Q. What did you find there?

A. A mound of rock.

Q. Anything else?

A. A tin can and a post.

Q. Was there anything in those cans, or did you look?

A. In some cans there was, but in others there wasn't.

Q. Did he take you to any point that he represented to you to be the center of the east side line?

A. Yes.

Q. What did you find there, and what was the distance at that point from the southeast corner?

A. Approximately 750 feet, with a mound of rock, as I have already stated, with a post in it.

(Testimony of Dr. Jerome P. Porter.)

Q. Did he take you to what he represented to be the northeast corner of the claim? A. Yes.

Mr. METSON.—This is objected to on the ground he is testifying these points are there.

The COURT.—Let the objection be noted. Defendant excepts.

Q. What did you find there?

A. A mound of rock with a post in it.

Q. Did he take you to what he represented to be the north center? A. Yes.

Q. What did you find there?

A. A mound of rock and a post, with a tin can.

Q. Did he take you to what he represented to be the northwest corner of the claim? A. He did.

Q. What did you find there?

A. A mound of rock with a post and a can.

Q. Did he take you to what he represented to be the center of the west side line? A. He did.

Q. What did you find there?

A. A mound of rock with a post.

Q. Did you prepare an additional and amended certificate of location of the claim? A. I did.

Q. Is that the original? (Hands paper to witness.)

A. That is the original.

Q. Did you make a copy of that, Doctor Porter?

A. Yes, I made one. I don't know whether I have any with me.

(Testimony of Dr. Jerome P. Porter.)

Q. No, I mean at the time did you make a copy of that? A. Yes, I had duplicate copies.

Q. Did you post it on the ground? A. No.

Q. You did not? A. No.

Q. This you sent to the recorder and had recorded?

A. Yes.

Q. And no copy of this was posted on the ground?

A. No.

Mr. GOODWIN.—We offer this in evidence.

Mr. METSON.—We object on the ground that the paper seems to have been altered and interlined, especially with reference to the record thereof, and until that is explained we will object to it. May 21st seems to have been stricken out and June 19th to have been put in, and 17 written up above.

Mr. GOODWIN.—What does your record purport to show?

Mr. METSON.—Our record purports to show it was recorded on May 17th, and it purports to show further it was thereafter altered and interlineations put in it after it had been recorded. We will ask leave to cross-examine the witness before it is admitted.

The COURT.—Let it go in subject to the proof, if there is any point on it after the evidence is in, it can be made.

Q. Mr. Porter, did you send this to the recorder to have it recorded? A. I took it there personally.

(Testimony of Dr. Jerome P. Porter.)

Q. You took it there personally? A. Yes.

Q. And this change, if any, was that on there when you got it back?

A. It was made by the county recorder.

Q. It was made by him, and you got this instrument back in the condition in which it now is?

A. Yes, and I think you will find his initials there.

Q. Whatever change appears on the back of that instrument was made by the county recorder at the time he was recording it? A. Yes.

Q. And is that true of the changes on the face of the instrument?

A. That is in my handwriting (indicating); that is the only change I made, right here, "monument" instead of "shaft," and that was done with an indelible pencil.

Q. And was done when?

A. Before it was sent to the recorder.

The COURT.—Who was that made by, Mr. Wharburton? A. Yes, sir, he did the recording.

(By Mr. METSON.)

Q. Doctor Porter, when did you deliver that paper to Mr. Wharburton first?

A. Some time in May. I don't know the dates.

Q. Was it on May 17th? A. About that time.

Q. Then after that did you not go back and make additions to the paper in June?

A. Yes, I had a survey made.

(Testimony of Dr. Jerome P. Porter.)

Q. You went back and had additions made to that paper in June? A. Yes.

Q. Is that correct, sir? A. Yes.

Q. Where is the paper that you filed with Mr. Wharburton?

A. That is the one, he made the changes there himself.

Q. He made the changes in June on a paper theretofore filed in May?

A. Yes, sir; he interlined that himself, or made the changes himself; that is the original paper.

Mr. GOODWIN.—Mr. Metson means is there another instrument; wasn't there another instrument that you took there May 17th, and then after you had your survey you recorded an additional and enlarged instrument; what is the fact? If you have such another one we will want them both. A. We have it.

Q. You have the other? A. Yes.

Q. Whereabouts is that?

A. It is in my room, I think, at the hotel. I have Mr. Wharburton's stamp on the back of the other one also.

The COURT.—The other copy of this with the changes in the other, and some additions, was that recorded by Mr. Wharburton? A. Yes, sir.

The COURT.—If you take them both it would explain the thing, and do away with the objections.

(Testimony of Dr. Jerome P. Porter.)

Mr. METSON.—Q. I show you, Doctor Porter, this instrument about which we have been asking you questions, and ask you if these words, “It is also found in Book B, page 119, Records of Tonopah Mining District, said County and State,” were not interlined in the document that you gave to Mr. Wharburton on May 17th?

A. I would have to look up the document.

Mr. GOODWIN.—We will produce the other document.

A. I cannot remember those things, I haven’t looked at them for a couple of years.

Mr. GOODWIN.—We will offer this as Plaintiff’s Exhibit No. 6.

The COURT.—I will admit it subject to the other, and see what the facts are. It will be admitted subject to the objection.

Complainants’ Exhibit No. 6.

ADDITIONAL AND AMENDED CERTIFICATE OF LOCATION.

Know all men by these presents that the undersigned Jerome P. Porter, a citizen of the United States, has this 17th day of May, 1902, amended, located and claimed, and by these presents does amend, locate and claim by the rights of the original discovery, and the location heretofore made such deeds, transfers or conveyances as may have been made, and this amended

(Testimony of Dr. Jerome P. Porter.)

certificate made, filed and recorded as provided by federal law and by the laws of the State of Nevada now in force, and local customs and rules fifteen hundred linear feet, on this lode, vein, ledge or deposit, bearing gold, silver, lead, copper and other valuable minerals, with all its dips, angles, and variations as allowed by law, together with three hundred feet on each side of the middle of said vein at the surface, and all veins, lodes, ledges or deposits and surface ground within the lines of said claim.

This said lode was originally located by D. R. Lewis and Chas. J. Carr on the 26th day of August, 1901, and named the Dave Lewis Hope, by which name it is found of record in Book E of Mining Locations, pages 123 and 124, Nye County, Nevada Records. It is also found in Book B, page 119, Records of Tonopah Mining District, said county and State. The name of this lode in future will be the Mizpah Intersection, the date of this amended location is made the 17th day of May, 1902. The name of the amending locator is Jerome P. Porter. From the discovery point at the discovery monument there is claimed by me one thousand feet in a southeasterly direction and five hundred feet in a northwesterly direction, along the course of said lode or vein. The general course of this vein is north 8° west by south 8° east.

The discovery shaft or its equivalent is situated upon the claim eight hundred feet south from the north end center and exposes the ledge at a depth of fully ten feet; its dimensions are 5 by 8 by 10 feet deep.

(Testimony of Dr. Jerome P. Porter.)

This is further additional and amended certificate of location is made and filed without waiver of any previously acquired and existing rights in and to said mining claim, but for the purpose of correcting any errors or omissions in the original location, or location certificate, description or record; and for the purpose of securing the benefits of the Act of the Legislature of the State of Nevada. Approved March 16th, 1897, and the amendments thereto, and of conforming to the requirements of law. The amending locator hereto is the original locator or lawful grantee deriving title and right of possession from them by deed of conveyance. This said location is described by metes and bounds as follows, to wit: Commencing at apex of hill at post or monument and running north 8° west five hundred feet to center end post marked N. end center Mizpah Intersection, thence three hundred feet west 8° south to the northwest corner post marked N. W. corner Mizpah Intersection; thence seven hundred and fifty feet south 8° east to the west center side line post marked W. center side line Mizpah Intersection; thence 750 feet south 8° east to southwest corner post marked S. W. corner Mizpah Intersection; thence three hundred feet east 8° north to south center end post marked south center end line Mizpah Intersection; thence three hundred feet east 8° north to southeast corner post marked S. E. corner post Mizpah Intersection; thence 750 feet north 8° west to east center side line marked E. center side line Mizpah Intersection; thence seven hundred

(Testimony of Dr. Jerome P. Porter.)

and fifty feet north 8° west to northeast corner post marked N. E. corner post Mizpah Intersection; thence three hundred feet west 8° south to north center end post marked N. center end post Mizpah Intersection; thence five hundred feet south 8° east to the point of beginning.

Locator: JEROME P. PORTER.

Witness: J. D. LOTHROP.

R. A. VAUGHN.

(Endorsed:) Am. Cert. of Location filed for record June 12th, 1902, at 12:15 P. M. Recorded in Book "C," page 394-5, Tonopah Mining Records. R. C. Gordon, Mining Recorder. W. B. Sollender, Acting Recorder.

Recorded at request of J. P. Porter, May ¹⁷ 11 and June 9, A. D. 1902, at 2 min. past 2 P. M. in Book E of Min: Loc., pages, 141-2, Nye County, Nevada, Records. W. Brougher, Recorder. By Thos. Wharburton, Deputy.

(Marked Complainants' Exhibit No. 6.)

Q. When you were there in May was Mr. Carr with you?

A. Well, he came there; he was not with me particularly, he came there while I was in town.

Q. Were you and he on the ground there together?

A. We were.

Q. With Lewis? A. Yes.

Q. Mr. Porter, there is a copy of a photograph that has been admitted in evidence, do you recognize it?

(Hands Complainants' Exhibit No. 3 to witness.)

(Testimony of Dr. Jerome P. Porter.)

A. I do.

Q. State approximately when that was taken with reference to the 17th of May, 1902?

A. Just about that time.

Q. About that time? A. Yes.

Q. Was that taken before or after you had done what you term the assessment work there?

A. Afterwards.

Q. There is a point there marked in lead pencil "P," another one "T," another one "W of C," another marked "C," another "L," and another marked "Carr." State to the court what those points indicated in that photograph so marked represent if you can so state.

A. These points represent the corner posts of the claim; I tried to have the posts photographed, but they were so small they would not show, so I had a person stand at each post, and you have to put a glass on it to see the people.

Q. Now the point marked "P" on that diagram represents what? A. The southeast corner.

Q. The point "Carr" represents what?

A. The east center post.

Q. The point marked "L" represents what?

A. The west center post.

Q. The point marked "T" indicates what?

A. South center.

Q. The stake marked "W of C" represents what?

A. That is the east center post of the Mizpah.

(Testimony of Dr. Jerome P. Porter.)

Q. The east center post of the Mizpah?

A. Yes.

Cross-examination by Mr. METSON.

Q. Doctor Porter, you say that you first went to Tonopah in November, 1901? A. Yes.

Q. Where did you go from?

A. I was traveling with a concert company.

Q. Who were in that company?

A. I was one of the owners of it.

Q. Who were the other owners?

A. Mr. Charles; it was called the Porter-Charles Concert Company.

Q. What time in November did you arrive at Tonopah?

A. About a week before Thanksgiving.

Q. At what place did you stop while there?

A. We were camping.

Q. Where did you put your camp?

A. Right near the lower part of town, just as you enter the town.

Q. How many were in the company?

A. About eight or nine performers.

Q. Where did you go from Sodaville?

A. We went from Sodaville there, we showed in Sodaville.

Q. You showed in Sodaville? A. Yes.

Q. Also at what other place? A. Tonopah.

Q. Any other place?

(Testimony of Dr. Jerome P. Porter.)

A. In Carson, Reno and Virginia City, all over the place here.

Q. How long did you stay in Tonopah?

A. About a week or a little more.

Q. Did you show every day?

A. Well, there were one or two things happened, funerals and one thing and another, we didn't show every night, four or five or five or six concerts during the week, about five.

Q. Where did you go then?

A. From Tonopah, Nye County to Bishop Creek.

Q. Can you tell what date you arrived at Tonopah?

A. No, I could not tell the date; it was about a week before Thanksgiving, about that; we ate Thanksgiving dinner at Tonopah, I remember, and we left a day or so after that, I think the next day.

Q. Was Mr. Charles there with you?

A. He was with me.

Q. Who was managing the company, you or Mr. Charles?

A. Well, in fact both of us, it didn't require very much management.

Q. Did you go around the mines there at all?

A. Yes, I visited several of the mines, and went in the Gordon tunnel by invitation.

Q. Which tunnel?

A. The Hudgens-Gordon tunnel, by invitation.

Q. Who was with you?

(Testimony of Dr. Jerome P. Porter.)

A. Doctor and Mrs. Hudgens, and my wife, Mrs. Porter.

Q. You were never engaged in mining before, were you? A. Oh, yes.

Q. Have you been engaged in a good deal of mining?

A. About eleven years.

Q. And you say you were in no other property there except this tunnel?

A. I went all over the Mizpah on the different claims, I didn't go down them, just examined the ore on the dumps; it was all very interesting to me of course.

Q. There were a good many locations there in November of 1901, were there?

A. Well, I didn't pay particular attention to the locations at that time.

Q. Well, you knew there were a great many there?

A. Yes, there must have been; but you are asking me what I know.

Q. You saw a great many monuments? A. Yes.

Q. And a great many excavations, did you not?

A. Yes.

Q. Just describe all the monuments and excavations you saw there, Doctor.

The COURT.—I do not think you can take in all that.

A. I can describe them all right if you want me to.

The COURT.—Of course, generally, all the posts

(Testimony of Dr. Jerome P. Porter.)

there may have been on the claim; it would only be to test the memory of the witness, if you wish to.

Q. You were around with Doctor Hudgens?

A. That day in particular that we visited the tunnel; they invited us up to their house.

Q. And you say that you were up on Oddie Mountain? A. Yes.

Q. Did anybody go up there with you?

A. I went alone.

Q. Alone? A. Yes, sir.

Q. And did you see any excavation on Oddie Mountain? A. I did.

Q. And this was in November of 1901?

A. Yes, sir, before Thanksgiving day, several days.

Q. You saw but one excavation there, Doctor?

A. Yes, up on the hill, only one that I saw.

Q. You went all over the hill looking for excavation, didn't you? A. No, I did not.

Q. But you did see one there?

A. Yes, sir; I was not looking for excavations when I saw it, I was not interested in it.

Q. How was it that you noticed this particular one?

A. That is what I wanted you to ask me.

Q. That is what we want to get at?

A. When I go to any new place of that sort, if there is any high peak I always make it a point to go up there and see the country, and I tried to get Mrs. Porter to go with me; but she did not do it, so I went to the top of this Mount Oddie at that time; you will

(Testimony of Dr. Jerome P. Porter.)

remember there was a post in a rock up there with a little board across it, it looked like a cross from the tunnel, and I pointed it out to Mrs. Porter and told her I was going there to get a view of the country. And I went up on the Mizpah ledge to the edge of the mountain, and climbed up the ridge to this monument or post or cross, whatever you call it, and I stayed there I guess for half an hour, walking back and forth, just looking over the country, and in coming down I took the short cut to Tonopah—well, it is just the natural trail, right down from the cross right to the main part of the town, and in going right down this little sort of a ravine or swag, there was a little work done there in the shape of a cut. Now why I noticed that cut particularly was not because I was interested in the claim, but Doctor Hudgens, the day before that I had gone in this tunnel with Doctor Hudgens, and having mined myself more or less for ten or eleven years, I expressed myself that Doctor Hudgens had spent a lot of money in running that tunnel, whereas I thought if he had sunk, he would have made more by it; I made that remark to several. And coming down this mountain, seeing this little work done, I don't know just how much it was, but a cut, and I stopped and said to myself that if Doctor Hudgens had sunk here instead of running this tunnel, he might have struck a fine mine, and I walked over to the edge of the mountain where I could see this Hudgens-Gordon tunnel to see if it was going to cut this ledge I

(Testimony of Dr. Jerome P. Porter.)

saw with a little quartz in, and I found his tunnel was going three or four hundred feet east of it, so I paid no more attention and came down and went down town.

Q. You took the short cut down town and the steepest part of the mountain until you came to this cut?

A. In climbing the mountain I went around the ridge where it was easier walking, but in coming down I took the straight cut like that.

Q. And you saw this little work there, and did you see a vein in it?

A. Yes, the vein came right to the grass roots; that is why I was interested in this tunnel to see if it was going to run in there.

Q. You went to the side of the mountain, to the eastward?

A. South, to see if Doctor Hudgens tunnel would cut this.

Q. To the east and south? A. Yes.

Q. And took an observation? A. Yes.

Q. To see if Doctor Hudgens tunnel would reach that? A. Yes.

Q. Then you went back to the cut again, did you?

A. Yes.

Q. Did you go down in it?

A. No, I wasn't interested in it at all.

Q. You didn't go down into the cut? A. No.

Q. How did you notice there was a vein there?

(Testimony of Dr. Jerome P. Porter.)

A. It showed from where I stood right on the side, as I walked along I could see the vein.

Q. And the vein dropped on the surface?

A. I am speaking of the quartz; the quartz showed in this vein; the croppings were 12 feet apart, if that is what you have reference to.

Q. You know what croppings are, being a miner?

A. I don't claim to be an expert miner, Mr. Metson, I have had some experience.

Q. Did it crop below this cut? Did the ledge crop below this cut?

A. The cropping of the porphyry were about 12 feet apart, and this vein that I have reference to now, that I am describing, as I stood on the side of this cut showed right down through about the center of this little crosscut that was run over this ledge matter, a little vein showing there in this crosscut; there was some croppings about 12 feet apart or so, and that was what attracted my attention, was this little vein that showed in this cut.

Q. And the croppings were on the strike of the vein, above and below the cut? A. Yes.

Q. It cropped below the strike, did it?

A. No, it didn't crop below, kind of run off into the hill, but the wall showed on the top above this vein.

Q. Did you see any croppings above the cut?

A. Yes, a little north of there, off east, above directly, would be east; but this vein matter run north and south, and north of this cut there were croppings

(Testimony of Dr. Jerome P. Porter.)

Q. Had you seen any miners around there?

A. I didn't look for miners, I wasn't interested in the place.

Mr. GOODWIN.—Just answer Mr. Metson's questions.

A. I saw no miners at all.

Q. You were interested in Doctor Hudgens, were you not?

A. I had known him for ten or eleven years, that is all, an acquaintance.

Q. You know the line of a tunnel has got to be marked on the surface, don't you?

A. At that time marked on the surface, no.

Mr. GOODWIN.—I object to this as entirely irrelevant and immaterial, and not cross-examination.

Mr. METSON.—I think the gentleman says he went around and took an observation of Doctor Hudgens' tunnel?

The COURT.—Ask what he saw.

A. Approximately, I could see that the tunnel was going to run three or four hundred feet east of there.

Q. You had to take a course upon the mountain to get this observation? A. Yes.

Q. And did you know that a line of tunnel had to be marked on the surface, under the law?

A. I did not—oh, I knew the line had to be marked, I didn't look for the line, I saw no line.

Q. And afterwards you say you went there again?

(Testimony of Dr. Jerome P. Porter.)

A. No, sir, I didn't go back again until next spring.

Q. Then you did go back?

A. I made inquiries—let me finish, and this will explain what you are trying to draw out.

Mr. GOODWIN.—Just answer the questions.

A. When I went down in Tonopah after leaving this mountain, I was interested in who owned this quartz, because in this country quartz in place is a consideration, and they told me they thought it belonged to the Butler group, as they owned everything on this side of the mountain, so I paid no more attention.

Q. You pointed out the place where you saw this quartz to the people you were inquiring of?

A. Yes, the location; I asked who owned that up there.

Q. And you say the excavation that had been made you pointed out? A. Yes, you could see it.

Q. And you could see the dump from down town, there were not many buildings to obstruct the view, were there?

A. No, you could just see a little streak.

Q. Then you asked some of the old-timers there in Tonopah what claim that excavation that had attracted your attention was on? A. Yes, sir.

Q. And do you remember who you asked?

A. I could not tell you, they were all strangers to me in Tonopah at that time.

(Testimony of Dr. Jerome P. Porter.)

Q. But you made sure they were people there that ought to know, old-timers, I suppose?

A. Well, from the answer they gave me; they said all that belonged to the Mizpah Company, or Jim Butler Company, that is what they said.

Q. Then you went back there in 1902?

A. Yes, sir.

Q. And you found all these tin cans?

A. Well, something that leads up to that.

Q. What?

A. I learned the party then that owned this ground.

Q. Answer the question: You did find all the tin cans? A. Yes.

Q. Were there enough in town after that to supply other markings?

A. Judging from the appearance, yes; they lived on canned goods there principally, so there ought to have been.

Q. You found a tin can in each monument?

A. Yes.

Q. Do I understand you to say that you did or did not find a mark in each tin can?

A. Not in all of them, some of them the marks were still there, the paper was still there.

Q. Now at the point marked number 5 will you please tell me whether or not there was a mark in a tin can, on the plat made by Mr. Carr.

A. I cannot remember just which one the paper was in, I didn't pay any particular attention; the paper

(Testimony of Dr. Jerome P. Porter.)

was in several of the cans, and some of them were taken out, or blown out, lost.

Q. Can you recall any particular monument in which there was a mark?

A. In the south center, I know there was a tin can in the south center.

Q. Please state what the mark on that was?

A. It was the south center monument of the Dave Lewis claim.

Q. That was all written on the piece of paper that was in the can? A. Yes, sir.

Q. Will you please repeat that, all of it that was on the paper?

A. This is the south center monument of the Dave Lewis Hope claim, that is as nearly as I can remember, word for word.

Q. Can you recall any other piece of paper that was marked in any other monument?

A. They were marked similarly, but in just what monuments I am not positive.

Q. Could you tell us in short, or in substance, about what the marks were that you remember, without particular reference to what monuments they were in?

A. Well, describing the corners, that was all; just describing the corners or posts; the descriptions were as short as possible.

Q. Was the name of the claim written on the pieces of paper?

A. On the pieces of paper that I saw.

(Testimony of Dr. Jerome P. Porter.)

Q. That you saw, the name of the claim was on each piece of paper? A. Yes, sir.

Q. As taken from the tin can? A. Yes, sir.

Q. Did you see any location monument there?

A. No, sir.

Q. All that you saw then was eight monuments?

A. Yes.

Q. Describe the monuments as they appeared to you in April, 1902, when you went back there?

A. Some of them were thrown down, or partially demolished; Dave Lewis took me around to them.

Q. I didn't ask that, I asked you to describe them?

A. Some were intact and some partially torn down.

Q. Take for instance the one that you say you found marked "south end center Dave Lewis Hope claim," was that up or down?

A. That was in good condition.

Q. Was that as much as four feet high?

A. I didn't measure it, but approximately it was about that.

Q. How wide was it at the base?

A. Well, that was placed—there was a cropping, there was a ledge or cropping there, and it was built right onto this cropping, and it was pretty wide, four feet or so, four or five feet.

Q. Four or five feet wide at the base, and I suppose it tapered towards the top some? A. Yes.

Q. Was it built all of rock, being on a cropping?

A. It was built of rock.

(Testimony of Dr. Jerome P. Porter.)

Q. Solid rock? A. Small rock piled up.

Q. No brush or dirt in it?

A. Well, no, I could not see any brush.

Q. Was there any stake in it? A. Yes.

Q. Please describe the stake?

A. Well, it is a pretty hard matter to describe the stake; it was just a post; I think it was two scantling nailed together, about 2 by 4 scantling nailed together.

Q. Two 4 by 4? A. Two 2 by 4.

Q. Two 2 by 4 nailed together? A. Yes.

Q. Were there any marks on the scantling?

A. Yes. South center post of the Dave Lewis Hope claim.

Q. The point we have been speaking about is number 6 on Mr. Carr's plat, now we will take point number 7, can you remember that monument in April, 1902?

A. That is the corner; you mean this one? (Indicating.)

Q. Yes, what would be the southwest there, number 7?

A. There was a little hole in the ground where I think some one had had a fire or done some little excavating; there was a post stuck up in that with rocks around it, but there was a little excavation; that was on the Mizpah claim.

Q. That is what I wanted to get at. How far was it upon the Mizpah claim?

A. Well, a couple of hundred feet, approximately.

(Testimony of Dr. Jerome P. Porter.)

Q. With reference to the Mizpah office, where was it?

A. Well, I don't know where their office is; has not their office been put up since then?

Q. What is your recollection about that?

A. Mr. Oddie's office then was over on Main street.

Q. Over on Main street in the town of Tonopah?

A. Yes.

Q. Was there no assay office on the ground in April, 1902?

A. There may have been, I don't know where it was.

Q. You know where the assay office is now, do you?

A. I know where the Douglas assay office used to be.

Q. You mean the one on the Valley View claim?

A. Yes.

Q. We are talking about the Mizpah.

A. I don't know where the assay office of the Mizpah was.

You know where the Lynch and O'Meara lease was?

A. Yes.

Q. Did they have a hoist there?

A. Yes.

Q. Can you describe how far this post was from the Lynch and O'Meara lease?

A. I could not give you an accurate description, no.
Court adjourned until Wednesday, July 13, 1904, at 10 A. M.

Court convened, July 13th, 1904, 10 A. M.

(Testimony of Dr. Jerome P. Porter.)

Cross-examination of Doctor PORTER (Resumed).

Q. Doctor Porter, I hand you a paper and ask you whose handwriting that is, if you know?

A. That is mine.

Q. And when did you write that?

A. When I was in Belmont, I think it was May 17th, I think that was the date.

Q. Of what year? A. 1902.

Q. In whose presence, if any one's?

A. In the presence of the County Recorder.

Q. Mr. Wharburton?

A. Yes, the young gentleman, junior.

Q. Did you leave this paper with Mr. Wharburton with that ink writing, that last at the end of the document, unaltered, and without erasure at that time, May 17th, 1902?

A. This was put on afterwards.

Q. I am just asking you about the ink writing at the latter half of the last sheet?

A. No, sir, this was all put on afterwards.

Q. Was that ink on the last half of the last page erased at the time you gave it to me Mr. Wharburton, on May 17th, 1902?

A. It was not there at that time.

Q. It had been erased before you gave it to him?

A. It had not been placed there at that time.

Q. It had not been placed there at that time?

A. No, sir.

(Testimony of Dr. Jerome P. Porter.)

Q. Now read the document, Doctor Porter, as it was given to Mr. Wharburton first, and we will get it straight that way.

A. Read it all through?

Q. If you please?

Mr. GOODWIN.—Understand his question: Read it as it was when you handed it to Mr. Wharburton first.

A. “Know all men by these presents, that the undersigned, a citizen of the United States, has this 17th day of May, 1902, amended, located and claimed, and by these presents does amend, locate and claim by right of the original discovery, and the location heretofore made, such deeds, transfers or conveyances as may have been made, and this amended certificate made, filed and recorded as provided by federal law and by the laws of the State of Nevada now in force, and local customs and rules, fifteen hundred linear feet on this lode, vein, ledge or deposit, bearing gold, silver, lead, copper and other valuable minerals, with all its dips, angles and variations as allowed by law together with 300 feet on each side of the middle of said vein at the surface, and all veins, lodes, ledges, or deposits and surface ground within the lines of said claim. This said lode was originally located by D. R. Lewis and Chas. J. Carr on the 26th day of August, 1901, and named the Dave Lewis Hope, by which name it is found of record in Book E. of mining locations, pages 123 and 124 Nye County, Nevada Records.” Then there was a blank left for the

(Testimony of Dr. Jerome P. Porter.)

pages in the District Recorder's books in Tonopah, that I had to fill in after I got over to Tonopah. And after an omission there of a certain number of lines to fill that in, it went on. "The name of this lode is Dave Lewis Hope. That date of this amended location is May 17th, 1902. The name of the amending locator is Jerome P. Porter. From the discovery point at this discovery monument there is claimed by me 1000 feet in a southeasterly direction and five hundred feet in a northwesterly direction along the course of said lode or vein. The general course of this vein is north 8 degrees west by south 8 degrees east. The discovery shaft or its equivalent is situated upon the claim 800 feet south from the north end center, and exposes the ledge at a depth of fully ten feet; the dimensions are 5 by 8 by 10 feet deep. This further additional and amended certificate of location is made and filed without waiver of any previously acquired and existing rights in and to said mining claim, but for the purpose of correcting any errors or omissions in the original location, or location certificate, description or record; and for the purpose of securing the benefits of the act of the Legislature of the State of Nevada, approved March 16, 1897, and the amendments thereto, and of conforming to the requirements of law. The amending locator hereto is the original locator or lawful grantee, deriving title and right of possession from them by deed of conveyance. This said location is described by metes and bounds as follows, to wit:"

(Testimony of Dr. Jerome P. Porter.)

Q. Mr. GOODWIN.—That ended it, there was no description? A. No, sir.

Q. Mr. METSON.—Now after what you have just read these words appear: “Commencing at NW. Cor. Sec. Cor. common to Secs. 25, 26, 35, 36, T. 3 N. R. 42 E. bears N. 26 45 E. at the distance of 4965 ft. Monument of earth and rock, Marked NW. Cor. Dave Lewis Hope. Thence south 47 45 E. feet. 300 feet intersect south line of Valley View lode at its middle point. 600 feet NE. Cor. Monument of earth and rock marked NE. Cor. D. L. H. Thence S. 42 15 W. 750 feet E. center side, Monument of earth and rock marked E. center side D. L. H., 1500 feet SE. Cor. monument of earth and rock, marked SE. Cor. D. L. H. Thence N. 47 45 W. 600 feet SW. Cor. Monument of earth and rock marked SW. Cor. D. L. H.; thence N. 42 15 E. 750 feet W. center side, monument of earth and rock, marked W. center side, D. L. H. 1500 feet to place of beginning. Dave R. Lewis, Chas. J. Carr, Locators. Jerome P. Porter.”

Q. Now, the words that I have read appear to have been erased by pencil? A. Yes, sir.

Q. When were they erased?

A. Before they were handed in to the Recorder.

Mr. GOODWIN.—Explain that whole transaction, just how that happened.

A. Up to as far as I read it was handed to Mr. Wharburton, and recorded; and I told him that I was not familiar with the form of a survey of a mining claim,

(Testimony of Dr. Jerome P. Porter.)

and asked him if I should have the privilege of copying one from some of his papers there, he said, "Most assuredly, just copy anything you like," so I copied this, I didn't know whose claim it was, it was just to give me the form, so as I would know how to write out the field-notes of survey myself, but up as far as I read here, all that was recorded; that is all you will find of record in Belmont.

Q. Did you copy it in the notice you intended to file, and change your intention to file it with the County Recorder, and erase the words I have read?

A. No, sir; I had a typewriter with me in Tonopah, but not with me in Belmont; I intended to go to Tonopah, as I did, and typewrite this, and then correct my corners, which I did, and have it done properly. I just copied this as a matter of form and this was not to appear at all.

Q. You copied it as a matter of form, and then made those erasures, and then handed it to Mr. Wharburton?

A. No, sir, it was recorded before I copied it, and I just used that as blank paper to copy the form of the survey or field-notes.

Q. What was recorded before you copied it?

A. As far as I read, nothing further.

Q. You recorded as far as you read before you copied this erasure?

A. I just used that as blank paper.

Mr. GOODWIN.—Maybe I can make that clear to you; it took me quite a while to understand it. He

(Testimony of Dr. Jerome P. Porter.)

went to Belmont with that paper prepared as far as he read, without any description; he handed that skeleton to the recorder, which the recorder recorded, the skeleton as presented; his intention was to go back to Tonopah and get a description of his property, he sits down in the Recorder's office, getting a form of the proper description of a mining claim, and takes that copy from some location that was there; he goes back to Tonopah, gets the description of his own claim, comes back with that description to the Recorder, then that description and the balance of the certificate of location is placed upon record, and that is the certified copy that we offered in evidence.

Q. Mr. METSON.—Now, Doctor Porter, you told me that you wrote this entire document at Belmont, and it is all in your own handwriting.

A. Let me show you on another page back here.

Q. I am speaking of the ink.

A. Oh, yes, the ink, that is right.

Q. You told me that you wrote that entire document?

A. Without my signature on the bottom; I didn't place my signature there, because it wasn't time for my signature.

Q. Let us understand it. Did you write this entire document in ink, as far as you read?

A. As far as I read.

Q. At Belmont? A. At Belmont.

(Testimony of Dr. Jerome P. Porter.)

Q. On the 17th day of May, 1902? A. I did.

Q. Now, did you at the same time write the matter in ink on this document that I read?

A. Later on in the day, towards evening; that was not handed in to the County Recorder.

Q. Now, I asked you a little while ago if you had written this matter I read, in ink, and had erased it before handing it to the County Recorder, and you said yes.

Mr. GOODWIN.—He didn't understand.

Q. I am asking now to make it clear, if I misunderstood you or you misunderstood me?

A. It was only handed to the recorder as far as I read, nothing further.

Q. Now then, go on and explain what was done there after it was handed to the Recorder?

A. I went back to Tonopah and got a correct description of the claim, the Dave Lewis Hope mine, then type-wrote the whole thing.

Q. I am speaking now with reference to what was done in Belmont after you handed it to the County Recorder, what was done there, if anything, either by the Recorder or by you, and tell us all?

A. All that I know is that the Recorder recorded what I handed to him, and left a space for the balance, I told him I would return with the balance completed in a few days.

(Testimony of Dr. Jerome P. Porter.)

Q. When did this matter in ink which I read to you get on this document?

Mr. GOODWIN.—He has already told you.

Q. I do not so understand it. I asked him what he did after handing the paper to the County Recorder at Belmont, and he says the Recorder recorded certain things in the book. Now I am asking after you had handed this document to the County Recorder and he had recorded it at Belmont, did you do anything else with this paper at Belmont?

A. Later on in the day, towards evening, I copied a form off one of his books, and used this for blank paper, if I understand correctly.

Q. Is that the matter in ink which I read to you a while ago, that you copied later in the day?

A. These field-notes I copied later in the day, after that was recorded.

Q. When did you erase those field-notes with pencil marks across the same?

A. I could not tell you.

Q. Now these field-notes that are erased are an exact copy of some form that Mr. Wharburton gave you at Belmont?

A. He didn't give them to me, he says "Just copy any of these field-notes of survey."

Q. And you did take the field-notes of some survey, and this is a correct copy of some field-notes in the Recorder's office?

(Testimony of Dr. Jerome P. Porter.)

A. I just made a hurried copy to get the form, I could not vouch for the correctness.

Q. As near as you could copy, it was a copy of what you took at the Recorder's office in Belmont that day?

A. Yes, placing no special importance to the copy, I just merely wanted a form.

Q. But you did endeavor to make a copy?

A. Yes, of course, if I had not had that idea in mind, I would not have copied it.

Q. It was simply a copy, that is all?

A. Just simply a copy of some field-notes.

Q. When did you return to Belmont again after May 17th?

A. Now, you are pinning me down to dates, and I would sooner you would refer to the papers, they are here. I could not say exactly the day; it is a couple of years back, I cannot remember the date.

Q. As near as you can?

A. It was just a short time afterward, a very short time.

Q. And what is your best recollection?

A. I won't mention dates, they are on the paper; the paper is in evidence, the amended certificate.

Q. The date on the amended certificate is the date that you next returned into Belmont?

A. Yes, sir; I am quite sure it is, and he interlined the initials there.

Q. Now, the date on this amended certificate seems

(Testimony of Dr. Jerome P. Porter.)

to have been changed, maybe that will refresh your memory.

(Hands paper to witness.)

A. I think that is the time I was there.

Q. If the dates on that record will refresh your memory any, explain please?

A. When I first went to Tonopah it was May the 17th, when I had the incompleated paper recorded, and when this completed paper was recorded, it was June the 9th, just about that time.

Q. It seems to have been May 21st there, from one of those dates, how do you account for that?

A. I could not tell you. This was the paper that was to be recorded, nothing else, that was just waste paper.

Q. After you returned to Tonopah, Doctor Portor, did you make any survey of the claim that you have been speaking about? A. I did.

Q. Can you tell us when you made that survey?

A. I didn't keep track of the dates; no, sir; I had a memorandum book in which I kept my expenses, and if I had known it was going to be called up I could have brought that book with me; it was a very few days after May 17th.

Q. Did you make the survey?

A. No, sir; it was made by a mining engineer, Mr. R. A. Vaughn.

Q. Did Mr. Vaughn and yourself put the stakes on the claim when you made the survey? A. Yes, sir.

Q. Who marked the stakes?

(Testimony of Dr. Jerome P. Porter.)

A. I marked them.

Q. And where is Mr. Vaughn?

A. He was in Salt Lake City the last I heard of him.

Q. When did you last hear from him?

A. About three or four weeks since; in fact, I didn't hear from him then; one of my attorneys heard from him.

Q. Just answer what you know, and we will get along better?

A. I have not heard from him for a couple of years.

Q. Your memory is good that he was with you and helped to make the survey?

A. He was the surveyor.

Q. Did you have any instruments?

A. Had a transit.

Q. Who carried the transit? A. He did.

Q. Who carried the stakes? A. I did.

Q. Who marked the stakes? A. I did.

Q. In whose handwriting were they?

A. In my handwriting, with indelible pencil.

Q. All nine of them? A. Yes, sir.

Q. How many times was this additional or amended certificate of location written in the records of Belmont?

Mr. GOODWIN.—I object as incompetent and not in cross-examination. The records are the best evidence.

The COURT.—That is true, but this matter is being tried before the court, and any point that is irrelevant when we come to decide the case will be ruled out, and

(Testimony of Dr. Jerome P. Porter.)

the objections will be noted and considered, when we come to them.

Q. Answer the question?

A. Well, there were two different dates, as far as I remember; the first day I was there, and the second day that I was there the article was completed on the book there.

Q. This paper that you read this morning, was not that written in the books on May 17th of 1902, in your presence?

A. As far as I read, yes, sir.

Q. Now, this other certificate which has been marked in evidence here as Complainants' Exhibit No. 6, appears to be endorsed as of the date of June 9th; now, was that written in the books, or portions of it?

A. No, sir; he just compared that one original there, and I remember now of changing the wording of this a little, and he told me that it was unnecessary to change the wording, and that he would leave it as he had it on the books, and make the change on this.

Q. The record was amended to conform to this document, Complainants' Exhibit No. 6, is that right?

A. As it appears on the book, it is copied as this is interlined.

Q. Then the record that you saw made on May 17th was corrected and not rewritten to conform to this one?

A. No; this one was corrected; that that was on the book remained, and this one was interlined as corrected.

(Testimony of Dr. Jerome P. Porter.)

A. Well, how did the description which was omitted from that of May 17th get on the books on June 9th?

A. Because it was completed; I completed this at that time; at first it was an incompleated article, and this was the completed article.

Q. Then the incomplete record was added to by putting in the description from this document, Complainants Exhibit No. 6? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. And this complete document, Complainants' Exhibit No. 6, was not rewritten in full in the books, as if it were a new instrument? A. No, sir.

Mr. METSON.—We ask to have this document that appears to be endorsed "Recorded at request of Jerome P. Porter, May 17, A. D. 1902, in Book 'F' of Mining Locations, pages 141-2, in Nye County, Nevada Records," marked as an exhibit for the defendant.

(Paper admitted and marked Defendants' Exhibit "A.")

Q. How many trips did you make to Belmont, Doctor Porter?

A. Well, all told, several, three or four; I think only two in connection with this.

Q. Only two in connection with this?

A. To the best of my recollection.

Q. How soon after completing the certificate did you go to Belmont with this amended certificate of location?

A. Well, I could not tell you the day; it was very soon afterwards.

(Testimony of Dr. Jerome P. Porter.)

Q. With reference to the photograph, Complainants' Exhibit No. 3, do you say all the flags that appear on the photograph represent monuments on the Dave Lewis Hope? A. No, sir.

Q. What one does not?

A. The east center post of the Mizpah.

Q. The east center post of the Mizpah?

A. Yes.

Q. And with what letter is it marked on the photograph there? A. "W. of C."

Q. Now will you indicate on the plat made by Mr. Carr where that post that you have marked "W of C." would be?

A. Well, it is just about there. (Marks point "12" on plat.)

Q. Did you measure the distance on the ground?

A. I did not.

Q. From the Mizpah post that you have marked 12 to the post 6 on the Carr plat? A. I never have.

Q. Did Mr. Vaughn in your presence?

A. No, sir.

Q. He never did? A. Not in my presence.

Q. Are there any other flags on the photograph there that mark any monuments other than the Dave Lewis Hope?

A. Our corners are marked here by letters, and any posts or photographs on here not marked by letters have nothing to do with our claim.

Q. I refer to flags?

(Testimony of Dr. Jerome P. Porter.)

A. There is one flag here that has nothing to do with our claim.

Q. Whereabouts is that place, describe it?

A. I will point it out to you. (Indicates on photograph.)

Q. The lowest one on the photograph. Just describe it?

A. I would sooner point it out; then there would be no mistake. It depends on which you mean as the lowest one, Mr. Metson.

Q. Well, mark it there. (Witness marks with circle.)

A. That has nothing to do with our claim.

Mr. GOODWIN.—Notice that, are you sure that has nothing to do with our claim? A. Sure.

Q. You are sure that has nothing to do with the Dave Lewis Hope claim? A. Yes.

Q. When did you say you were back on the Dave Lewis Hope claim after November, 1901?

A. That was in April.

Q. What kind of post was at the point marked 12 at that time?

A. Well, you mean the east Mizpah post, or the one I just marked 12?

Q. The one you just marked 12 on the Carr plat?

A. Well, it is pretty hard for me to describe a post of another mine; to the best of my recollection the earth was built up square around it, and there was a mound of rock with a post in it; that is the best of my recollection.

(Testimony of Dr. Jerome P. Porter.)

A. Yes, sir.

Mr. GOODWIN.—If your Honor please, we now offer a certified copy of the adverse, etc., with the plat, and certificate by the register.

The COURT.—Is there any objection?

Mr. Metson.—No objection, except the objection that we do not think the adverse is sufficient. The objection is that the adverse is not sufficient in form; it is a certified copy; we want to make a protest to that.

The COURT.—Your objection is not that the adverse if sufficient in form is not sufficient?

Mr. METSON.—I am not sure about the time. Our objection would be that it is not in time, and that it is not sufficient in form. The point is, that it has not a sufficient plat showing the adverse, made by a surveyor competent to make the same. We want to look into that.

(Paper admitted and marked Complainants' Exhibit No. 7.)

It is admitted that the first publication of the application for patent was on the 19th of September, 1903.

Mr. GOODWIN.—We offer in evidence the deed of Charles J. Carr to Thomas W. Chandler and Mary Thompson, of date the 12th day of April, 1902, and conveying an undivided one-fourth interest of, in and to, that certain mining property known as and called the Midway Mining Claim, situated, lying or being in Tonopah

(Testimony of Dr. Jerome P. Porter.)

or Butler, in the County of Nye, State of Nevada; also an undivided one-fourth interest of, in and to, that certain mining claim known as and called the Dave Lewis Hope Mining Claim, situate, lying and being in Tonopah or Butler, Nye County, State of Nevada. It is duly acknowledged and recorded at the request of Mary Thompson, April 18, 1902, in Volume "O," of deeds, pages 563-4, Nye County Records. W. Brougher, County Recorder.

(Deed is marked Complainants' Exhibit No. 8.)

Mr. METSON.—Put in all those documents, and we will look them over, and if we have any objection we will make it later.

Mr. GOODWIN.—The next deed we offer is from C. J. Carr to Thomas W. Chandler, of a one-quarter interest in the property affected. This deed is dated May 8, 1902, and recorded in Volume "O" of deeds, pages 563-4, Nye County Records.

(Deed marked Complainants' Exhibit No. 9.)

The next deed is from David R. Lewis to Jerome P. Porter, dated May 15th, 1902, a bargain and sale deed of the Dave Lewis Hope claim, and this deed is recorded in Volume "O" of Deeds, pages 576, 577, Records of Nye County.

(Marked Complainants' Exhibit No. 10.)

The next deed is of date June 14th, 1902, between Thomas W. Chandler and Mrs. Mary Thompson, both of Berkeley, California, the parties of the first part, and

(Testimony of Dr. Jerome P. Porter.)

Charles J. Carr and John G. Jury, the parties of the second part, reconveying to Carr and conveying to Jury, portions of the property in dispute. Recorded November 11, 1902, in Book "P" of Deeds, pages 513-15, Nye County Records.

(Marked Complainants' Exhibit No. 11.)

The next deed is of date May 23, 1902, from Jerome P. Porter to Thomas W. Chandler and Mary Thompson, of an interest in the property in dispute.

(Marked Complainants' Exhibit No. 12.)

From all of which conveyances I think your Honor will find it places the title in certain proportions in the plaintiffs in this action.

Doctor JEROME P. PORTER, recalled, testified as follows:

(By Mr. GOODWIN.)

Q. Doctor Porter, when you were on the Dave Lewis Hope claim, about the middle of May, as you testified, or the latter part of April, from the latter part of April to the middle of May, did you see there what purported to be a copy of an attachment in any action in which Lothrop and Davis were plaintiffs and Charles J. Carr was defendant? A. I did, yes, sir.

Q. How many of those notices did you see?

A. Two.

Q. Where were they situated?

A. One was on the south center post.

(Testimony of Dr. Jerome P. Porter.)

Q. The south center post as indicated by yourself and Mr. Carr on that diagram? A. Yes, sir.

Q. And where was the other situated?

A. The other was on the ridge of the hill; I could describe better by a photograph.

Q. Well, you may describe it by that photograph. Indicate on that approximately where the other was posted? (On Complainants' Exhibit No. 3.)

A. How will I mark it?

Q. Mark it "C. A." that would be "Carr attachment."
(The point is so marked on Exhibit No. 3.)

Q. Did you have the course between the south center post and the post on which that attachment was situated, taken?

A. Almost due north and south, a little—

Q. Answer my question: Did you get the course between the south center post and the post on which that attachment was? A. Yes, sir.

Q. What was that course?

A. Almost due north and south; a little west of north.

Q. Do you recollect how much west of north?

A. Eight degrees by the transit.

Q. Did you notice what marks were on these posts that these copies of attachments were placed on?

A. They were just the regular attachment notice, as published by the constable.

Q. Independent of the notices attached to these posts, did you notice how the posts themselves were marked?

(Testimony of Dr. Jerome P. Porter.)

A. Yes, they were marked "Dave Lewis Hope Claim."

Q. They both were marked "Dave Lewis Hope Claim?" A. Yes, sir.

Q. Did you talk with Mr. Lothrop about that attachment? A. He spoke to me.

Mr. METSON.—I object to that as hearsay.

Q. Did you get those two copies?

A. Not those two; I left those there.

Q. Did you get two copies, or a copy of the notices?

A. Yes, sir.

Cross-examination by Mr. METSON.

Q. What post on the Carr diagram did you find attachment notices on?

A. Well, it was right close to this one, about there.

Q. Mark it please?

(Witness marks point on diagram.)

A. It was a thousand feet from the south center post.

Q. A thousand feet from the south center post?

A. Yes.

Q. Did you measure it?

A. I know from the stakes of my survey that I made of the claim.

(Witness marks point on plat "C. A.")

Q. What is the point on the Carr diagram marked No. 1? A. I didn't draw that, Mr. Metson.

Q. Well, did you see that monument there when you were there in April, No. 1?

(Testimony of Dr. Jerome P. Porter.)

A. I saw a monument there.

Q. About how far was it from point "C. A."?

A. It was right at "C. A."

Q. I am asking you about point No. 1 on the Carr diagram; was there a monument at that point on the Dave Lewis Hope claim?

A. I did not see one there.

Q. When did you see the attachment notice at the point "C. A."?

A. Well, you are pinning me down to dates now; just a few days after I became interested in the claim.

Q. Was it in April or May, 1902?

A. It must have been April.

Q. It must have been April?

A. Yes; I cannot give you dates; the dates are on the attachment papers; you can get them easy enough.

Q. What was the size of the attachment papers?

A. A regular bill.

Q. Wasn't it more than one side of legal cap?

A. No; I am quite sure it was printed.

Q. Sir?

A. Well, I could not say for certain now. If you will allow me to explain. I took a copy of the copies down to Berkeley with me.

Q. I am asking you the size; was it a sheet the size of legal cap? A. I could not say as to the size.

Q. Was it larger, or shorter, or longer?

A. I think it was larger.

{Testimony of Dr. Jerome P. Porter.}

Q. And it was nailed on a board?

A. It was nailed on two posts on the Dave Lewis Hope claim.

Q. What was the size of those posts?

A. The south center posts was—it was a regular monument post. I am quite sure it was two scantling nailed together, two 2 by 4 nailed together, and the one upon the brow of the hill was in a monument of rock there, and it was three feet and a half out of the ground.

Q. When you put in your post, did you displace those posts? A. I put them right in the same places.

Q. Did you take out the old ones? A. No, sir.

Q. When you put in your stakes?

A. Put mine right in the side of them.

Q. You didn't displace them? A. No.

Q. Did you leave the attachment there?

A. Yes.

Q. You left the attachment papers there when you put your posts up in May? A. Yes, sir.

Mr. CHARLES J. CARR, recalled by defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. Mr. Carr, about the notice of location that you wrote, I am not sure whether you testified as to whether you wrote the notice of location first or last?

A. First, the first day, yes, sir; on the location monument I wrote the location the first day.

(Testimony of Charles J. Carr.)

Q. When you put up the location monument you wrote the notice of location?

A. I did; yes, sir.

Q. And put the notice of location in at that time?

A. Yes, sir, the same day.

Q. When did you put the tin cans in the monument?

A. On the next day.

Q. I say when, with reference to the notice of location? A. The first day.

Q. How did you date the notice of location, the day that you put up the location monument, or some other day? A. It was the 26th of August.

Q. Was that the date you put up the first location monument, August 26th?

A. Yes, sir, that was our location monument.

Q. Was there any other date to that notice of location except August 26th? A. No, sir.

Q. And any year date on it? A. 1901.

Q. 1901 was on it? A. Yes, sir.

Q. Are you sure about that? A. Yes, sir.

Q. In making the writing out at the time, do you remember whether or not you made any mistake in date, and erased the date and changed it to August 26th?

A. Not as I know of.

Q. You are sure the year date, 1901, was on that?

A. Yes, sir.

Plaintiff rests.

Mr. FRANK M. ISH, called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. What is your full name? A. Frank M. Ish.

Q. Where do you reside?

A. I reside in Goldfield, Esmeralda County, Nevada.

Q. Were you in Tonopah in 1901? A. I was.

Q. Do you know of a location that has been designated as the Ivanpah? A. Yes, sir.

Q. Now go on and tell the Court what you know about the Ivanpah location?

A. I made the location myself.

Q. The date?

A. The date was on the 10th day of October, 1901.

Q. Tell the Court what you did with reference to locating?

A. I went to the district a few days prior to that, a month or such a matter, became interested, as all miners and prospectors do, in the development of the lode there, the ore, and like all the balance of the people interested there, got interested in the strike of the ore, where it went to, after it disappeared under the leases going east, and I learned from a workman in what is known as the Dority lease, that there was a cross vein in the Mizpah crosscutting the Mizpah lode; I secured admission into that lease, and went down and saw that there was such a vein that had a strike to the north, I then went on to the hill to ascertain, if possible, what ground could be obtained, either by location or other-

(Testimony of Frank M. Ish.)

wise, on the strike of that vein, and in doing so I went to the end of the Mizpah ground, and examined from there to the north and west. I learned that the ground directly—

Mr. GOODWIN.—Don't state what you learned, we object to that.

The COURT.—What you did.

A. I found, probably if the Court will allow me, I state this from what I learned. I simply state I had been informed that a claim known as Silver State had been located a few days prior to that time directly on the extension of the Mizpah, or nearly so, and the reason I name this is, that I did not, knowing of the fact, or presuming it to be a fact, I did not investigate that part of the territory, but to the west of that and to the north I looked for such a thing as vacant ground, and any other claims that might be in there; and commencing at the northwest corner of the Mizpah, I found that the ground immediately to the west had been located, and then following that out I went upon this ground and discovered a vein on the Ivanpah ground, where I made the location. In looking this ground over I went to every monument that was on the hill, that could be seen, commencing at the north end of the Mizpah—or the east end of the Mizpah, and going across the ground in a northwesterly direction, and whatever ground was vacant to the left of what I thought to be the Silver Star location. In making this investigation I found

(Testimony of Frank M. Ish.)

that the ground where the present Ivanpah location, or where the Ivanpah location was afterwards made, was, as I thought, vacant.

Mr. GOODWIN.—Right there; it is conceded, is it not, that the Ivanpah and the Dave Lewis Hope are practically the same ground?

Mr. METSON.—No, sir; not at all. They were not the same ground, and it is not conceded.

A. And I examined all of the monuments that I could see, of whatever nature or description was on that ground, and I found in my investigations, up near the top of Mount Oddie, I found the location post, discovery post of the Dave Lewis Hope claim; I found a monument probably 20 inches high, possibly two feet and a half across, or such a matter as that, a small monument of rock, and in that monument a small can, a baking powder can or something of that kind, with a removable top, and I took out and read the notice. This notice then claimed, if my recollection serves me right, five hundred feet northwesterly and a thousand feet southeasterly or northerly and southerly, if I remember right. I am not exactly positive of that, more than it was, I think, northerly or northwesterly and southeasterly. Knowing the latitude that prospectors take to get the directions and locations of a claim, I sought to the north for space that would indicate where his lines were, and I found none. I then went to the south again, and examined all the ground along on the line of the

(Testimony of Frank M. Ish.)

Mizpah, or about that point, which would take it about the required distance, and I found none there. There were no side monuments that I could find; and not knowing further about his ground, I located the Ivanpah.

Q. What did you do about the 10th day of October with reference to the Ivanpah; state whether or not you wrote anything; if so, what?

A. Yes, sir; I wrote out the location notice, claiming 700 feet northwesterly and 800 feet southeasterly, I think.

Q. Just tell the Court the facts. Did you do anything with this notice?

A. I wrote this notice and put it in a can, and placed it in the monument.

Q. What kind of a monument?

A. A stone monument about three or three and a half feet high, probably two feet and a half or three feet wide at the base, possibly it might have been four, I don't know that. It was a stone monument, however, placed on the vein that I discovered.

Q. Now state what you discovered, if anything, state fully to the Court.

A. Well, I discovered what I thought, and still think, to be a vein, an ore bearing vein. I thought at the time that it was ore bearing, and found afterwards that it did bear ore. It cropped, and in fact it is the only one that I ever found on Mount Oddie, that is what I would term to be a mineral-bearing vein. It cropped at the

(Testimony of Frank M. Ish.)

point of discovery about five or six feet wide, and then continued to the southeast for about 125 feet, where you could see the croppings extending above the surface for from a few inches to 18 inches high. This cropping was of a silicious porphyry, crystallized quartz; differed entirely from the riolite in which it was located.

Q. Where was the riolite with reference to the silicious porphyry?

A. The riolite composed the walls of either side. It was the country rock; the walls were composed of riolite.

Q. Where was the riolite with reference to this vein you were speaking of, if a vein?

A. On both sides of it.

Mr. GOODWIN.—I do not think there is any serious question between us that there is a vein in that ground, subject to location.

The COURT.—If he was going to make a location it would be necessary to say what he found. I do not suppose there is any contest.

Q. Was there any work done on this place where you put this monument?

A. Yes, sir, I did not do the work myself, but I employed Mr. L. O. Ray. He subsequently did the work. He did it about the first of December, by driving a cut into the hill which exposed the vein at a depth of ten feet, the cut.

(Testimony of Frank M. Ish.)

Q. Now, where was this discovery monument, or where did you put this monument in which you placed this notice, with reference to this work?

A. Well, it was some place about 15 feet away. The work was about 15 or 20 feet to the westward of where the monument was.

Q. Did you ever have any of that rock assayed?

A. Yes, sir.

Q. State to the Court whether it carried any gold?

A. I had two samples made, one I had assayed by Knapp & Luke, I think, if I remember correctly. One went four dollars and some cents, less than four dollars and twenty cents, and the other one went a dollar and something, I do not remember just what. I do not remember exactly, probably a dollar and some cents, a little over a dollar.

Q. What metals? A. In gold and silver.

Q. Were there any other monuments or marks put upon this ground at any time by anybody?

A. Yes; at the time of putting up the location monument, I built at the northwest end—I would state to the Court that I naturally have always been somewhat confused about the direction of the Mizpah lode there, the north and south direction; my natural direction has always been a little bit off there, so I have got to stop and recall it; but it was on the north end or northwest end of the claim, I put up the corner monuments; the northwest corner was situated very close to the location of the North Star tunnel site.

(Testimony of Frank M. Ish.)

Mr. GOODWIN.—What was that, I did not understand?

A. I say the northwest corner was situated a few feet below the location site of the North Star tunnel site.

Mr. GOODWIN.—Q. That is the tunnel on the other side of the hill?

A. That is the tunnel running through the mountain from the north.

Q. That is not the present site of the North Star shaft?

A. Oh, no. And then I built the southwest corner 600 feet, to the southwest of this one I speak of. Those two constituted the corners, and then I built the southwest side center, and the northeast side center; the east end of the claim, or the southeast end of the claim, the two monuments I did not put up until some time in December.

Q. December of what year? A. 1901.

Q. Now, will you describe each one of those monuments fully and carefully, one by one?

A. Yes, sir, the northwest corner near the North Star tunnel site was composed of stone, and it was a large stone that was sticking in the ground. I piled rock over that, making just simply an ordinary monument of stone, with this large one sticking in the ground, and I made that probably four and a half feet on the bottom, with the aid of this big stone, and made it three

(Testimony of Frank M. Ish.)

and a half feet high; that monument was all composed of stone, as I speak of it, and I marked it with a stake, a piece of box that I secured down town and broke up, and put in all of these monuments, just a small strip of box, marked the "Northwest corner, Ivanpah claim." The southwest corner I built up of stone, simply piled up on the ground a number of stones and I made it about three feet high, but the width of it I do not know, and I marked that.

Q. What is your best memory as to the width?

A. I really do not recollect what it was more than it was possibly— I do not know, I could not say for certain, but probably three and a half, might have been as high as four and a half feet wide, but of that I do not recollect. Now, the southwest side center was down on the slide rock on the side of the hill, and I simply pulled a lot of this together and made a mound probably three feet high, and marked that the same way. The northeast side center is composed of small stones and piled up, just an ordinary monument, and marked the same way as the others. The southeast corner that I put up afterwards in December was an old monument that had been built, evidently had been built, at least I think so, from a large stone that was partially sunk in the ground, and kicked down, and the rocks scattered about. I used that and rebuilt it of the same material, and made it a large monument, probably five feet across the bottom and three feet and a half high, quite a large one. The northeast corner I built in the gulch, a little

(Testimony of Frank M. Ish.)

draw. I built that of stone the same way. It was also set on the ledge, a part of the formation sticking out, and I built the monument around and over that, and marked that the same way as the others, simply marking a small board and sticking it in there, whichever corner it might be.

Q. About how many monuments were builded by you from October 9th until the first day of January, 1902?

A. I built the location monument, and six other monuments, the four at the corners and the two side centers.

Q. State whether or not marks were put in some, each, or all of them?

A. I put marks in all of them.

Q. Indicating what, what were the marks?

A. The marks indicated the respective corners of that claim; the northwest corner was marked "Northwest corner Ivanpah"; the southeast corner was marked "Southeast corner Ivanpah"; the southwest side center the same; the southeast corner the "Southeast corner Ivanpah"; and the northeast corner the "Northeast corner Ivanpah."

Q. State to the Court how many times you were on that mountain during the year 1902, subsequent to October the 8th say?

A. I think I went on the hill on the 9th first.

Mr. GOODWIN.—The 9th of October?

(Testimony of Frank M. Ish.)

A. The 9th of October, and then I went on again the 10th.

Q. How long have you lived out in that Tonopah country?

A. I have lived there since about the 25th of August, 1901, preceding that.

Q. State whether or not there was any excavation in the nature of a cut on that ground in October, 1901, when you went there?

A. No, sir, there was absolutely not a breaking of the surface, not a pick point that was visible for a distance of a hundred feet anywhere within the confines of what was then located as the Ivanpah claim.

Q. Was any work done within the limits of the Ivanpah claim subsequent to October 8th or 9th, 1901, other than this work that you speak of Mr. Ray's doing?

A. No, sir, there was none done, not a particle.

Q. Now, as to 1902, was there any work done within the Ivanpah by anyone?

A. Yes; some time in the month of February, now, I don't know the date. I at that time had charge of a property at a place called Weepah out at Lone Mountain, and employing a number of men, it was necessary for me to go into town very often, that is quite often, sometimes once a week, and sometimes once in two weeks, or oftener; I do not remember the dates, but on returning from one of these trips, I saw that an excavation had been made on the side of the mountain, at

(Testimony of Frank M. Ish.)

a point where, very near where the present location of the North Star shaft it. It was new, and I discovered it, as I say, from a long distance, the breaking of the surface of that hill you can see for long distances; it was plainly visible from the town.

Q. What was the nature of the ground with reference to showing excavations and displacements of any materials on the surface?

A. Well, the face of Mount Oddie, the south face of Mount Oddie faces the town, and it is in plain view, for a greater part of the south face. There was, in fact, I do not know of any spot, unless it would be a very small one, but what you could see the entire thing from the streets of the town. Now, the material itself, the riolite on top of the hill, is of a burnt brownish color, inclined to black, a great deal of it, shining black some of it; it apparently is a sunburn or staining or coloring by the heat of the sun. You break that and it discloses a white and light color, and it was the same in this case.

Q. Suppose an excavation of two or three feet deep, and three or four feet long or wide, should be made on the face of Mount Oddie, would it disappear in two or three days, or a week?

A. No, sir, it would be there yet, if it was made years ago.

Q. Take this location point where you put your notice of location, and tell the Court where this tin can

(Testimony of Frank M. Ish.)

in which you found a notice of location of the Dave Lewis Hope claim was?

A. Do you want it indicated on the plat?

Q. No, tell the distance, describe it to the Court, if you can.

A. This notice of the Dave Lewis Hope claim was, as I say, in a small monument on top of the ridge, and near the apex of Mount Oddie, on the west slope. The mountain has, as some might term it, a hog back, that is, a ridge like that runs down there; it was up on that ridge, as I say, near the apex of the mountain. I could not tell the distance, but from the present location of the North Star shaft, it must have been five or six hundred feet, or is to-day, where that monument is yet to-day, is up on top of the hill five or six hundred feet. I never took the measurements, but that is my recollection.

Q. Now, will you take this piece of chalk and go to the blackboard and assure me that the point is the location monument that was marked "Dave Lewis Hope," will you please lay out the Ivanpah?

A. And using this diagram on the board for about the same size?

Q. Yes, make it about the same size. About 1500 by 600, assuming that.

(Witness draws diagram.)

A. I would mark the discovery of the Ivanpah at a point about there. (Indicating.)

(Testimony of Frank M. Ish.)

Q. About how many feet is that from the point 1, being the Dave Lewis Hope location notice point?

A. Well, that will exceed 400 feet, just how much I do not know. At about that time I took a measured stick, my recollection of it, it was about 12 feet long by the plumb-bob; going up over the hill here, from this point to this point, is quite steep; in order to get some idea of the distance from this point to this point, I took a plumb-bob, a 12-foot stick, I think it was a 12-foot stick, leveled it from point to point to obtain as nearly as I could, the exact distance from this point to this.

Q. From point "X" it is quite steep to what point?

A. To the point marked "1."

Q. Please designate by the letter "O" where the work was done by Mr. Ray?

A. The work done by Mr. Ray relatively, it would be right in there.

Q. A little west?

A. Yes, it may be a little higher, but it would be very close to the monument.

Mr. GOODWIN.—That diagram was drawn from the cut described by the witness as being 45 feet north of the shaft; Mr. Carr having drawn that diagram from that center or base, this is simply confusing unless they use the same. We do not propose this shall go to the court as representing the situation there on the ground.

The COURT.—I do not understand that. They are

(Testimony of Frank M. Ish.)

taking that as being correct. Of course if it is not correct we will get it straightened out, whatever it may be.

Q. Now, from that point please lay out the various corners of the Ivanpah Claim?

A. The side center at a point about here, or near there, another side center down here; and then the northwest corner was 700 feet; this one extended 700 feet, and this was 800 feet is my recollection; that is relatively about where they were, that is my recollection, using this as the location point of the Ivanpah.

Q. Mark the exterior boundaries, if you please, the end lines and the side lines.

(Witness marks boundaries as requested.)

Q. Designate those corners as they were marked on the ground?

(Witness marks the corners and side lines.)

Q. Now, will you indicate there where you say this cut or dump rather, was made after the first of 1902, when you were going back and forth to Weepah, you say?

A. Some place about near this line in here, from that side center over, I should say, down in here some place. (Indicating.)

Q. Mark it "B. L. Cut."

(Cut so marked on diagram.)

Q. Assuming that the white lines as made by Mr. Carr are the lines of the Dave Lewis Hope Claim, where would the dump made when you were going back and

(Testimony of Frank M. Ish.)

forth to Weepah be, inside of those white lines or outside of them? A. Using this as a basis?

Q. Using the white lines as a basis, was the work inside of the white lines, or outside, not using the diagram in blue chalk at all.

A. Well, I have got to think; I believe it would be clear outside of their lines.

Q. About how many feet would it be from the point where you found the Carr notice?

A. Well, the Carr notice was found on top of the ridge at this point here "1," that is, I assumed that in making this map, that that is the point marked "1" and I made this to start on, using this as a starting point.

Q. Using that as a starting point, how far outside or inside of the westerly side line of the Dave Lewis Claim, would that dump be?

A. It would be well without it.

Q. About how many feet?

A. Why, I should say not less than between fifty and a hundred feet.

The COURT.—Not less than fifty to a hundred feet outside of the line?

Q. I think so, using this point here at which the Dave Lewis location notice was posted.

Q. Did you make more than one copy of the notice of location that you posted on or about the 10th day of October, 1901?

(Testimony of Frank M. Ish.)

A. My recollection of it is that I did.

Q. Do you know what was done, if anything, with the copy?

A. Yes; I was not in Tonopah regularly, and I gave this notice to a friend of mine, Mr. George Croslett, and asked him to have it recorded, which he did; that is, subsequently I learned that it had been.

Mr. METSON.—We offer now a certificate of location of the Ivanpah made by F. M. Ish on the 10th day of October, 1901.

Mr. GOODWIN.—Have you a notice of location in addition to this?

Mr. METSON.—It is a copy of what was posted on the 10th day of October.

Defendant's Exhibit "B."

CERTIFICATE OF LOCATION.

State of Nevada, Nye Co.

Know all men by these presents, that I, F. M. Ish, have this 10 day of Oct., 1901, located 1500 ft. linear ft. on the Ivanpah lode or vein or deposit together with 300 ft. on each side of the middle of the vein 700 ft. running southerly and 800 ft. northerly from center of discovery monument. Situated Tonopah Mining District, Nye Co., State of Nevada, to wit: The south end of this claim adjoins the north side line of the Mizpah mine and crosses a portion of the east end of the Lucky

(Testimony of Frank M. Ish.)

Jim, is situated on the west and northwest slope of the high hill northeast of the town of Tonopah known as the Oddie Peak. Filed for record Jan. 8, 1902, at the request of George Coslett.

T. F. EGAN,
District Recorder.

Recorded in Book C, page 32, of the Mining Records of Tonopah Mining District.

State of Nevada,
County of Nye,—ss.

I, R. C. Gordon, District Mining Recorder of Tonopah, Nye County, Nevada, do hereby certify that the foregoing is a true and correct copy of the location notice of the "Ivanpah" mining claim as the same appears of record in my office in Book "C," page "32" of the Mining Locations thereof.

Witness my hand and official seal this 28th day of June, A. D. 1902.

R. C. GORDON,
Recorder.

By W. B. Sollender,
Deputy Recorder.

(Marked Defendants' Exhibit "B.")

Recess until 1:30 P. M.

(Testimony of Frank M. Ish.)

After Recess.

Direct Examination of Mr. FRANK M. ISH (Resumed).

Q. Mr. Ish, I think I asked you to describe the work that was first done within, we will say 1500 feet southerly, or within a thousand feet southerly, either southeasterly or southwesterly of where you say you saw the notice of the Dave Lewis Hope location signed by Carr and Lewis?

A. The first work that I saw after this, after seeing the notice?

Q. Yes, the first work you saw?

A. Was the cut that was driven into the hill there, a point very close to the present location of the North Star shaft.

Q. North Star tunnel?

A. Shaft; there was no other work done on the hill that I recollect of until some months after, late in the summer of 1902.

Q. Wasn't there some work done there at some time after October 10, 1901?

A. No, sir; there was no work done there whatever.

Q. You just said there was a cut run?

A. That was in the following spring. I said the first work that was done after my seeing the notice; I first saw that notice in October of 1901, and the first work that I saw on the ground, or that was done on that hillside, other than the Ivanpah location, was this cut

(Testimony of Frank M. Ish.)

that was driven in the mountain that I speak of, near the present North Star shaft.

Q. Now, describe to the Court the condition of the ground there on Oddie Mountain, on the southerly side of Oddie Mountain, or westerly side as to its being rocky with large bowlders, or as to large trees, or as to brush, large bushes, or small bushes, or small trees, or sand; just give the Court a general description of the condition of the mountain.

A. Well, the mountain is almost one of solid rock; there is a little, but very little brush on it; there is a good deal of slide rock, but not large bowlders, not in large pieces; there is, in places, considerable slide, other places the bedrock crops entirely out; there are no large or bold projections to speak of in the shape of rock, or otherwise, nor are there any very deep gulches. Running down by the northeast corner of the Mizpah, running in a direction from the top of Mount Oddie, down through by that corner, there is a gulch that has some depth, that you could not see into unless you would be right in the face of it, and it lays almost directly towards town, so that the entire face of the mountain appears to be—is capable of being seen from the town of Tonopah, from the streets.

Q. As to the work that was done by Mr. Ray, is that to be seen from town?

A. Well, it is just on the skyline of the hill, looking at the hill from most any part of town, it just appears about on the skyline, just on the western slope of it,

(Testimony of Frank M. Ish.)

that part of the hill does not face the town, it is some on the west slope, slightly to the west, southwest.

Q. Now, as to the point where the notice of location of the Dave Lewis Hope claim, was, how was that?

A. Well, that is over the ridge, slightly, that you can possibly see the top of by looking, it is a very small monument; it is just over the brow of the hill slightly; I don't know that you could see it; I don't believe you could see it from the town; it would be so little under cover, almost in sight, just under the brow of this ridge, under the apex of the mountain.

Q. What is the distance of that location, the Dave Lewis Hope mine, from the main street of the town, say about where the Golden Block or Butler Building is?

A. I should say it would be a little over 3,000 feet, I should judge so, by taking the Mizpah mining claim, the length of it, estimating that way, about a thousand feet beyond that, or such a matter, or a little over; I should say close to 3,000 feet from Main street.

Q. Now, take the North Star shaft, the present working shaft of the North Star Mining Company, is that in view or hidden from view in the main street in Tonopah?

A. It is entirely in view; in view for I think the entire distance of the street, I am quite satisfied as far up as the Gold Hill mine.

Q. And southerly?

(Testimony of Frank M. Ish.)

A. Southerly as far down as the stables there, or graveyard, anywhere down there you can see.

Q. How is it from Davis & Lothrop's store, the telegraph office and post office?

A. From there you can see plainly, there is nothing to obstruct the view.

Q. And Wells, Fargo & Company's office?

A. That is the same condition, nothing to obstruct the view from anywhere on the street at all.

Q. I understand you to say that at some time you began to go away from Tonopah on short visits, after October 10th, 1901?

A. Yes, sir.

Q. When was that?

A. It was in the spring, in the month of February.

Q. When did you first notice this work that you say was done some time in February in this cut?

A. Well, I don't know the date of it, I do not know the date exactly, I cannot recollect, but about those dates; it was sometime in the spring, and I went out to this town of Weepah, and it was about twenty miles out, and my business took me backwards and forwards, and it was on one of these visits, referring to the way I fix it, as much as anything else was, I think it was my second visit out there, and when I returned I saw this dump, what part of the month I do not know.

Q. What month could you say?

A. The month of February, 1902.

(Testimony of Frank M. Ish.)

Q. How far is the present main working shaft of the North Star from the Lothrop & Davis store, and Wells, Fargo's building, and the postoffice and the Butler building?

A. It is about 2,500 feet, I should say.

Q. Was there a smaller cut at the place where you say you saw this work done in February, was there a small cut prior to February at that place.

A. No, sir.

Q. Could it have been there and you not have seen it?

A. No, sir; it could not have been and I not have seen it.

Q. Now, as to your traveling back and forth over that country in the last part of 1901, were you or were you not upon this mountain or over this ground at any time in 1901, after October 10th?

A. Yes, sir; I was.

Q. State to the Court about how many times, if you were there more than once?

A. Well, I would not undertake to name how many, I do not know; after the putting up of this location notice I was over there, oh, I should say two or three times, might have been more; I know that I was there early in December, and went across and went over to the point of work where it was afterwards done on the Ivanpah, and then down to the North Star tunnel site, and returned the same way over the hill, instead of going around it.

(Testimony of Frank M. Ish.)

Q. You heard Mr. Carr testify here, did you not, as to a cut that was made on that hill sometime in 1901, by himself and Lewis? A. Yes, sir.

Q. You heard him describe where it was?

A. Yes, sir; I heard him describe where it was.

Q. How close did you go to that place in December of 1901, on this trip that you speak of?

A. I went almost over the spot where he claims it was located.

Q. How far is the tunnel line running from that point where Mr. Carr claims this work was done?

A. Why, it runs almost over, within 40 feet of it anyhow. The line of the North Star tunnel, you mean?

Q. Yes, the North Star tunnel.

A. Yes, sir; the North Star tunnel, the line of it runs within—the fact of the matter is, it is a good deal less than that, of where this cut afterward appeared; it is within five or six feet of it; that is the actual tunnel line as surveyed out.

Q. Was this tunnel line monumented or laid out on the ground at that time?

A. Yes, sir; it was in October.

Q. It was in October?

A. Yes, sir; that is, the monuments were there when I first went on the hill.

Q. Now, as to monuments or stakes other than tunnel monuments or stakes on that hill above the claims of the Butler Company, or Tonopah Mining Com-

(Testimony of Frank M. Ish.)

pany of Nevada; explain to the Court how many other monuments or stakes were seen by you?

A. I have not any recollection of seeing any stakes on that part of the hill except of Corona stakes, which was a claim that runs northwest, I think, I never had the course of the trail, but I think it runs northwest and southeasterly, and lay in at the bottom of the hill, which would be at the southwest of the present location of the Ivanpah; there was a stake or two in there, near the corner of the Mizpah, northeast corner; there was a bunch of stakes in there, or monuments rather.

Q. You have heard Mr. Carr testify that in August of 1901, he put up nine large monuments there on that ground, and put tin cans in each of them, and stakes in each of them; I will ask you whether or not at any time in 1901, you saw any monuments or stakes of the kind or character at the places described by Mr. Carr, except the one where you found the notice of location?

A. No, sir; I never saw them, and I know further, that if they had existed, I could never have helped but seen them.

Mr. GOODWIN.—I move to strike that out.

The COURT.—I will leave it in.

Q. Now state to the court, if you have not fully already, your opportunities for seeing monuments, and what search for stakes or monuments you made, if any, subsequent to the 10th of October or prior thereto, in the year, 1901?

(Testimony of Frank M. Ish.)

A. I made a search of that hill, as I explained on my first examination, when I first commenced to testify, that I searched that hill as thoroughly as I could search it I thought, so that I was satisfied of all parts of the ground, as to whether or not there were any locations that covered that ground, and I found no stakes or monuments, except the ones that I have now described; and I will say, however, one more, that was a monument that lay over behind the hill to the north of where the North Star shaft is, behind the hill; there was a monument there without any notice or mark of any nature or description, down over the hill.

Q. About how far off from this one on top of the hill where the notice of Carr and Lewis was?

A. From that it was probably two or three hundred feet, I should say, to the north of that.

Q. To the north? A. Yes.

Q. Is that what you said, to the north?

A. Yes, to the north.

Q. Do you know where the Indian Queen tunnel was there? A. Yes, sir.

Q. Where was that?

A. That was directly north of the apex of Mount Oddie, about 100 feet below the apex on the north side.

Q. And about what depth was that tunnel?

A. My recollection of it is that it was—the tunnel itself, after it got under cover, was about ten feet.

Q. After it got under cover was ten feet to the face?

A. Yes, sir; I think so.

(Testimony of Frank M. Ish.)

Q. As to stakes or posts marking the claims on the hill, when did you first see any there, other than the one that you have described up on top of the hill there?

A. I never saw any posts there until well along in the spring.

Q. Of what year?

A. In 1902; along towards—I cannot fix the time very distinctly in my mind, but it was some time, in my judgment, along in the month of May or June.

Q. Now, Mr. Ish, you know where the present claimed monuments of the Mizpah Intersection claim are, the Dave Lewis Hope claim originally, do you?

A. I only know one positively to identify it; I could only identify one, and the original discovery where the notice I have described was.

Mr. GOODWIN.—I understand the question to be as to the monuments that are now there, placed there in May; does the question go to that?

Mr. METSON.—No, I mean at the present time.

A. I would like to have that question repeated again.

(Question read.)

A. Why, I do not know that there are any of them standing now, I could not say.

Q. Did you ever go up on this mountain with Mr. Booker? A. No, sir.

Q. Do you know the location commonly known as the "Favorite"? A. Yes, sir.

Q. What is that?

(Testimony of Frank M. Ish.)

A. The southwest corner of the Favorite is about, oh, some places a hundred feet southwest of the apex of Oddie mountain; the southeast corner is well down toward on the other side, somewhat close to the mouth of the Gordon and Hudgens tunnel, on the east side.

Q. With reference to the southeast corner of the Favorite, where was this monument where you found the Dave Lewis Hope location notice?

A. From the southeast corner?

Q. Is that the nearest corner?

A. No, sir, the southwest corner of the Favorite.

Q. The southwest corner; about how far is the Dave Lewis Hope monument, where you found the notice, from the southwest corner of the Favorite?

A. Well, that would be hard for me to say just how far.

Q. If you cannot tell, don't guess it?

A. It would be hard for me to estimate what that distance is.

The COURT.—Approximate it, to the best of your recollection and judgment?

A. I would say somewhere around a couple of hundred feet, it might be more or less.

Cross-examination by Mr. GOODWIN.

Q. You say the stakes that you saw there on what we call the Dave Lewis Hope claim, were first seen by you sometime in the month of May, 1902?

A. Yes, sir.

(Testimony of Frank M. Ish.)

Q. That is, in the month of May, 1902, you did see stakes which marked what we claim now to be the Dave Lewis Hope claim, didn't you?

A. I do not undertake to say definitely about that date, but it was in the month of May or June.

Q. In the month of May or June, 1902?

A. Yes.

Q. How many stakes did you see?

A. I never remember of seeing any that I knew was marked as the Dave Lewis Hope stakes except one.

Q. Where was that situated?

A. That was situated down near the center of the Mizpah claim, the Tonopah Company's ground, not far from the line of the lease.

Q. Was it down near the point marked 6 on this diagram of Mr. Carr's, these points here marked 10 and 12 being two points placed by different witnesses, as representing the situation or location of the Mizpah center stake?

A. Well, it was very—I could not undertake to locate it from that; I can describe it to you with reference to the northeast corner of the Mizpah claim.

Q. Take the center stake of the Mizpah.

A. Well, I do not remember to have ever seen such a thing; I do not know whether they have got such a thing or not, the east end center, I do not know that they have.

(Testimony of Frank M. Ish.)

Q. Well, how is it with reference to the northeast?

A. The northeast, it would be, oh, about south or southeast from that, a distance of about, probably it would be 350 feet, it might be a little bit more, about that, I think.

Q. You don't mean to say that it was not close to the east end center, if there was such a stake, of the Mizpah?

A. No, I do not know of any place that is called—I never knew of a stake called the east end center of the Mizpah; if there ever was one, I never saw it.

Q. Do you recognize that photograph, Mr. Ish, the general locality?

(Hands photograph to witness.)

A. Yes, sir.

Q. What is this building here? (Complainants' Exhibit No. 3.)

A. Well, I cannot make that out, what that is; that would seem to be a building on the—yes, that is the company's house.

Q. Do you know what dump that is over on the left-hand side of the picture?

A. Yes, sir; that was the last dump that produced ore on the Mizpah.

Q. Do you see two small points?

A. Yes, sir.

(Testimony of Frank M. Ish.)

Q. Do you recognize either of those as being the stake which you say you saw marking the south center of the Dave Lewis Hope?

A. I didn't say that I saw one marking the south; the only one I saw was right in here, in about that dump, on the trail, and went up over the Mizpah there.

Q. Could it have been there? (Indicating.)

A. I do not think so; I think it stood in here, very near to this dump.

Q. Is not that very near to that dump?

A. It does not seem so to me.

(The witness points to the post marked "C. E.")

Q. The one you saw was in that neighborhood, there, wasn't it? A. Yes, in the neighborhood.

Q. How was that marked?

A. I don't remember any lettering on it except the Dave Lewis Hope.

Q. Well, didn't you at that time investigate for other stakes? A. I did not.

Q. Why not?

A. For the very good reason that I did not think the Dave Lewis Hope claim existed long since.

Q. You went on the ground and found that stake?

A. Yes. ..

Q. Did you look for any other stakes?

A. I did not at that time.

Q. Did you subsequently?

A. I subsequently have been over the ground.

Q. Looking for stakes?

(Testimony of Frank M. Ish.)

A. No, not necessarily.

Q. When you went over the ground did you see any other stakes that marked, or professed to mark, the exterior boundaries of the Dave Lewis Hope?

A. I don't think I ever did, any other stake.

Q. So that is the only stake you ever saw in that locality or neighborhood, or on that side of the mountain, excepting the original stake that you described up on the ridge, that professed to indicate the boundaries of the Dave Lewis Hope claim?

A. That is the only one that I definitely know; I will state I never went over the ground subsequently to that time particularly looking for stakes.

Q. Don't you think if there had been eight or nine stakes there in June, marking the several corners, marking the side lines, that you would have seen them?
ing the discovery and marking both centers, and mark-

A. I would have seen probably some of them; there is no question in the world but what I did see stakes that might have been marked Dave Lewis Hope.

Q. If you did, cannot you tell the court where they were?

A. I do not know, sir; I did not make any particular examination.

Q. You didn't pay particular attention to them?

A. I will answer that I made no examination of posts to so identify them; I did see this post and I can give you an accurate description of it.

(Testimony of Frank M. Ish.)

Q. But as to the others you made no search and can report no information as to any other posts?

A. Not marked Dave Lewis Hope, no sir.

Q. Even at that late day? A. No, sir.

Q. You were first on that ground October 9, 1901?

A. Yes, sir.

Q. You went back again the next day?

A. I think so.

Q. What did you do on the 9th?

A. Oh, I went up on the hill; I went to the Dority lease; the Nevada City boys lease, as I understand it.

Q. Was that one of the Mizpah leases down in the flat?

A. Yes; I went into that mine that morning, and looked at that vein; that I had been informed—

Q. Never mind; you went through that, your reasons for going I do not care about? A. Yes.

Q. After you left the lease and went up onto the mountain, what did you do before coming down?

A. I went up to size up the ownership of the ground that was owned, who owned it.

Q. That morning you understood that the ground down there by the Mizpah was owned and located?

A. Yes; parts of the ground, to the west and to the east.

Q. Didn't you understand that the ground north and west of what you subsequently located as the Ivanpah was located ground?

A. Please repeat the question?

(Testimony of Frank M. Ish.)

Q. North of the Mizpah and west of what you subsequently located as the Ivanpah; didn't you understand that Mr. Butler had some locations in there?

A. No, sir; that was not the fact; I learned that there was a claim called the Silver State; it was an east extension of the Mizpah, had been located; and I also had been informed and had seen the stakes of the Lucky Jim and the Triangle, and of a claim called the Corona.

Q. You knew that the Lucky Jim was located there?

A. Yes, sir.

Q. And those others you have mentioned?

A. Yes.

Q. You understood that belonged to Mr. Butler?

A. I did not say I understood that, as they did not at that time.

Q. To whom did they belong?

A. To Mr. Clifford.

Q. Didn't Butler have an interest in them?

A. I did not so understand that he did; I do not think it was a fact that he did.

Q. From the 9th up to the 1st day of February, how many times were you on that hill?

A. The 9th of what?

Q. The 9th of October, the date that you have just referred to.

A. I could not say, probably not less than, I would say, four or five, probably five trips that I took up there.

Q. Were you up the 9th and back the 10th?

(Testimony of Frank M. Ish.)

A. Yes, and I was probably up there two or three times more.

Q. Two or three times more before the first of February? A. Yes.

Q. And during that time you saw no other stakes, nor evidence of work? A. No, sir.

Q. Excepting the stake that you discovered up there on the brow of the hill? A. Yes.

Q. Now, just describe that stake to me, will you please?

A. My recollection of it is that it was there the first time I went on the hill.

Q. And you saw that stake the 9th, did you?

A. My recollection of it is that I saw it then, and it was sticking in a small monument of rock, that was probably twenty inches high, and the stake was split at one end, partially split off.

Q. What was the size of it?

A. That was a 4 by 4; it was probably three feet long, probably three and a half, and it had the name, if I recollect right, Dave Lewis Hope.

Q. On the stake? A. On the stake.

Q. What else was there?

A. There was a can in the monument.

Q. And what was there in the can?

A. There was a location notice claiming the Dave Lewis Hope claim, signed by Dave Lewis and Charles Carr, their initials, I don't now recall; it was dated and the name of the claim was on it. I recollect about the

(Testimony of Frank M. Ish.)

notice that it had the appearance of having been redated.

Q. It had the appearance of having been redated?

A. Yes, redated.

Q. In what way?

A. August 26th had been rubbed out, and it had the appearance of a piece of paper that you would wet your finger, written with an ordinary lead pencil, and you would wet your finger and rub it over, and the date of August 26th was inserted or written over the top of this erased portion of the notice.

Q. You say it had that appearance?

A. It had that appearance to me.

Q. Did it have the general appearance of having been prepared by a miner?

A. Yes, I would say a miner.

Q. That is, a man not accustomed to handling a pen or pencil?

A. Why, yes, it had the appearance.

Q. Now, this is a photograph of Mount Oddie, is it?

(Complainant's Exhibit No 3.)

A. Yes, sir.

Q. Will you indicate on that photograph approximately, as near as you can, where that post was that you saw?

A. I cannot see any point now to fix any point for certain.

Q. Cannot you, by the contour of the hill, Mr. Ish, indicate on that photograph wher you found that stake?

(Testimony of Frank M. Ish.)

A. I can, approximately; it would seem to me to be about there.

Q. Just mark it there, mark it "C. A. I."

(The point is so marked on the photograph.)

Q. Now, will you indicate on there the point of your discovery, approximately?

A. Right on the sky there.

Q. Right on the skyline below that second knob?

A. Yes.

Q. Is it not possible that the post that you saw was at the point on the photograph marked "C. A." or in that neighborhood?

A. Well, I do not think it is possible that that could be the point.

Q. You never at that time took any particular pains to locate that stake, did you? A. Yes, I did.

Q. When did you next see that stake?

A. What time do you refer to, the next after what?

Q. You have described it when you first saw it; now, when did you next see it?

A. I saw it, I think, I am quite satisfied I saw it the second day.

Q. When did you ever see it again?

A. I saw it in a few days; I do not know just how many, just a few days after that.

Q. A few days after? A. Yes.

Q. When did you last see it?

A. Well, within the last—let me think; I have been

(Testimony of Frank M. Ish.)

to Goldfield for over six months; I don't believe I have been up there for six months.

Q. Have you seen it there since the middle of May, 1902? A. Oh, yes.

Q. You have seen it there since then? A. Yes.

Q. How many times since then?

A. Well, that would be a very hard thing to say.

Q. Haven't you seen it a good many times since the 17th of May? A. Yes, a number of times.

Q. Would you say you have seen that post five times since the 17th of May, 1902?

A. I think so, without any question, I have seen it that many times.

Q. How did you come to look at it? Were you with anybody?

A. I never recollect of having been there with anybody, although I may have been there with somebody.

Q. Why did you go so often to this post?

A. A good reason for a number of those visits was that I had men working at the Indian Queen location work, and as I had charge of them for the North Star Company I went by there a number of times.

Q. What other reasons?

A. That was sufficient, that I know of.

Q. Haven't you gone there several times to see whether or not that post was still remaining there?

A. I don't know that I ever did.

Q. You don't think that you ever did?

(Testimony of Frank M. Ish.)

A. I don't remember that I ever went there for that direct purpose.

Q. How many times would you say that you have seen that post from the time you saw it on the 9th of October up to the time that you came into court?

A. Well, it would be hard to say the number of times; I have not any distinct recollection of visits up there, but I remember a number of times I was on the mountain.

Q. Ten or fifteen times, would you say?

A. Possibly that many; I don't know; I can only approximate.

Q. And the only other post that you ever saw was the one down there in the southeast corner of the Dave Lewis Hope?

A. Yes, to know; I never knew any other; I have seen other posts on the hill that appeared there afterward, that I didn't know, and never did know.

Q. Did you make any inquiry? Did you know who Dave Lewis was, when you went up there that day, the 9th?

A. I did not.

Q. After you came back did you make any inquiry to find out who he was?

A. I did in the course of a few days; I asked about Lewis.

Q. Did you find out who he was?

A. I found out he was a prospector, an old man.

Q. Did you look him up or get acquainted with him in any way, or ask him anything about his location?

(Testimony of Frank M. Ish.)

A. I did not.

Q. At that time you were familiar with the customs and rules of the district, and the State law?

A. Yes, in a measure.

Q. You knew at that time that Lewis had a certain length of time within which to mark his boundaries and perfect his location?

A. Yes; I knew it was ninety days in which to mark boundaries and do the location work on a claim.

Q. And you made no investigation or inquiry, none whatever, of Lewis, to find out whether he intended making the location, or perfecting it? A. No, sir.

Q. Did you, in December, when you had your work done? A. No.

Q. Before you went up there in December did you go all over the ground to see whether or not the stakes had been struck that you failed to find?

A. Yes, I went over the ground in December.

Q. Where did you go?

A. I think that my examination then was confined to going over from the Mizpah corner in that gulch, going up and taking about the line, as near as I then could locate it, the line of the Silver State, and going up over the top of the mountain, on the west side, and then crossing back to the line of the G. and H. tunnel, and returning by the North Star, that locality, and back over the hill.

Q. You say that notice called for 500 feet in a north-

(Testimony of Frank M. Ish.)

westerly direction and a thousand feet in a southeasterly direction? A. That is my recollection.

Q. Now, did you go out 500 feet in a northwesterly direction?

A. In a northwesterly direction; yes, sir; I did.

Q. And found nothing?

A. I found no monument or stakes, that is, I found the monuments of a line of the North Star tunnel, and the monuments on the G. and H. tunnel.

Q. You found monuments out there 500 feet?

A. Why, I found these monuments along the line of the North Star tunnel site.

Q. And you examined them and say they were applicable to that particular location? A. Yes.

Q. Did you go in a southeasterly direction a thousand feet?

A. Yes; I examined all of the monuments at what would be about that point.

Q. And found none?

A. I found lots of monuments.

Q. But none that were marked Dave Lewis Hope?

A. No, sir.

Q. Did you find any marked south center?

A. No.

Q. And southeast corner?

A. Well, of what?

Q. Just marked south center and southeast corner?

A. I did not; I don't remember that there was a monument there but what was marked what it was.

(Testimony of Frank M. Ish.)

Q. Now, in December you say that you did your work? A. About the first of December.

Q. That is, you employed it?

A. I employed Mr. Ray.

Q. What did that consist in?

A. It consisted in a cut running into the hill.

Q. What was the size of the cut?

A. I should judge it was about four feet wide, and run into the hill and cut the vein at a depth of about ten feet, that is in the direct face. There was about, I should say, fully eleven or twelve feet, probably eleven feet, from the top of the cut as it extended down to the bottom of the cut, the cut being somewhat of an adit, a little on the incline.

Q. When was that work completed?

A. I do not know, about that time sometime; somewhere between the first and fifteenth.

Q. When did you record your certificate of location?

A. Now, I really do not know.

Q. The 8th of January, didn't you?

A. I do not know.

The COURT.—If the certificate has the date on.

Q. It is the 8th of January. Now, had you recorded any notice of location, or anything of that sort, prior to the time that you filed that certificate of location for record with the district recorder?

A. I do not think so.

Q. That was the first filing that you made, was it?

(Testimony of Frank M. Ish.)

A. I think so.

Q. Did you intend that as your notice of location, and the filing of it the record, or did you intend that as your certificate of location under the State statute?

Mr. METSON.—I suppose his intentions are incompetent, the facts speak for themselves.

The COURT.—I suppose the notice will speak for itself. I think that would indicate what his intention was, that would be better than what he might say about it, but he may answer the question.

Q. Answer the question, Mr. Ish.

A. That the certificate of location I have been shown here to-day, you ask me if that was my intention when I made that out to be the certificate of location under the statute?

Q. Your certificate of location under the statute, or notice of location?

A. This must have been the certificate of location, it was to be so intended.

Q. Did you post a copy of this document that you have filed here on your claim.

A. I do not know that I posted a copy of that, but I posted a notice claiming the same points that are mentioned in there.

Q. Well, this was filed January 8th with the District Recorder, and February 8th with the County Recorder; now why didn't you describe the work that you had done on this claim in this certificate?

(Testimony of Frank M. Ish.)

Mr. METSON.—I object to that, it is asking for a conclusion.

The COURT.—Note the exception, and I will allow the testimony.

A. Why didn't I describe it in that?

Q. Yes?

A. I guess the best answer to that is that the certificate of location as filed, was recorded, was the one that was made by and filed by—whether it was made up by him or not, I don't recollect, but it was made up, I think, by Mr. Croslett.

Q. You were familiar with the State statute at that time? A. Well, I might have been, yes.

Q. And you had done your work? A. Yes.

Q. You gave him the data from which to prepare the certificate, did you not? A. Yes, I think so.

Q. Why did you not have the work you had done at that time included in your certificate?

A. I could not answer you why. It might have been an oversight possibly, or probably was, more than anything else.

Q. You did not recollect at that time that the description of the work was one of the principal elements in the certificate of location, did you?

A. Well, I do not think that I prepared it; my recollection is that Mr. Croslett prepared it, this certificate of location, from the original location notice itself, and recorded it for me.

(Testimony of Frank M. Ish.)

Q. Will you look that over and state whether or not it is in the form, as near as you can recollect, in which it was prepared by you, and filed with the District Recorder and County Recorder?

(Hands witness Defendants' Exhibit "B.")

The COURT.—He did not say it was prepared by him.

Mr. GODWIN.—Prepared as he has testified, I did not intend to misstate the testimony.

A. I think this is as near—this is a pretty close copy of the original notice.

Q. Now, that is what I am getting at. Is not that your original notice?

A. Well, I don't know as to details about it, whether it is or not.

Q. Is not that your original notice?

A. In a large measure it is.

Q. Point out there what there is contained in that that was not in your original notice; and is not that a certified copy of your original notice of location?

A. That is about the description, and I don't say but what that must be very, very close to the copy. I don't know that it is a copy, but it is very close.

Q. To the best of your recollection, you state that is a copy of the notice of location that you posted on your claim? A. Yes, very close.

Q. Now, look at this, and read it. (Hands paper to witness.)

A. Well, I have looked over this before.

(Testimony of Frank M. Ish.)

Q. What is that?

A. That was the certificate of location that was filed with Mr. Croslett, as I understand it.

Q. Now, let me read this and you follow there: "State of Nevada, Nye County. Know all men by these presents, that I. F. M. Ish, have this 10th day of October, 1901, located 1500 linear feet on the Ivanpah lode or vein, or deposit, together with 300 feet on each side of the middle of the vein, 700 feet running southerly, and 800 feet northerly from center of discovery monument."

A. There is the word "running" northerly here.

Q. Well, there is a difference, "running" is not in this. "From center of discovery monument, situated Tonopah Mining District."

A. Situated "in" Tonopah Mining District.

Q. This is just "situated Tonopah Mining District, State of Nevada."

A. "State Nevada," "of" is left out here.

Q. "To wit: The south end of this claim adjoins the north side line of the Mizpah mine, and crosses a portion of the east end of the Lucky Jim. Is situated on the west and northwest slope of the high hill northeast of the town of Tonopah, known as the 'Oddie Peak.' Filed for record January 8, 1902, at the request of George Coslett. T. F. Egan, District Recorder. Recorded in Book 'C,' page 32 of the Mining Records of Tonopah Mining District."

(Testimony of Frank M. Ish.)

A. "T. F. Egan, Jan. 8, 1902, at 20 minutes past 9 A. M." it is here.

Q. The endorsements are a little different. That is substantially the same as I have read from here, except two little words? A. Yes.

Q. On the head of what you have introduced here is "Certificate of Location," that does not appear on that certified copy? A. No.

Q. With that difference, then, the notice that you posted is identical with the certificate of location that you have offered in evidence, isn't it?

A. I do not think it is; yes, I think this one—I remember distinctly that the location notice was a printed form, and it was filled in; and it was printed, parts of it that does not appear on there.

Q. Didn't you record your notice of location?

A. I recorded a certificate of location.

Q. Didn't you record your notice of location in the District and County records?

A. Why, that is it.

Q. No, the notice that you posted on the ground, didn't you record that, Mr. Ish?

A. I recorded that certificate, and it is practically a copy of—

Q. I am not asking you that.

A. It is a copy of the original certificate of location.

Q. As a matter of fact, did you or did you not record a copy of the notice that you posted on that claim the 10th of October, 1902?

(Testimony of Frank M. Ish.)

A. Now, I will state that all I know about the matter is that that certificate there—

Q. Answer my question, please.

A. Is that that certificate there is largely a copy of the original notice as put on the claim by me.

Q. Now just answer my question: Did you or did you not record with the County Recorder and the District Recorder a copy of the notice that you say you posted on your claim the 10th of October, 1902?

A. I am perfectly willing to answer you. Here is the proposition; this thing was prepared, this certificate of location.

The COURT.—Did you record more than one notice?

A. No, sir.

Q. And that is the one that he has got, that you recorded?

A. Yes, sir, that is it. (Defendant's Exhibit "B.")

Q. That is what I am trying to get at, that this is the notice of location, and not a certificate.

The COURT.—And that is the fact, that he had but the one.

Q. You had but the one recorded? A. Yes.

Q. Now, prior to recording that, what had you done with reference to marking the boundaries?

A. I had put up the northwest corner, the northeast corner, the southwest side center, and the northeast side center.

Q. Didn't you state that prior to, or about the lat-

(Testimony of Frank M. Ish.)

ter part of December, you finished the markings by placing the stakes on the south end, and the monuments? A. Yes, on the south end.

Q. In other words, I understood from your testimony that prior to the first of January, 1902, you had marked all of the boundaries? A. Yes.

A. Had put up all the stakes and fixed the monuments, as you testified to?

A. That was my testimony.

Q. Why didn't you describe those monuments and those stakes and corners in your certificate of location?

Mr. METSON.—I object to that.

The COURT.—The same objection will go to all of this.

Q. Why didn't you do that?

A. As I say, I never prepared the certificate of location filed by George Croslett. The fact of the matter is, that I was away in Colorado.

Q. You were where?

A. Away in Colorado.

Q. When?

A. In the latter part of December, and January, the first of January; and I wrote to Mr. Croslett and asked him particularly to look after this matter, and make a certificate of record of this claim, and he did so, and he omitted to make any notice of the description in it.

Q. Didn't you know that the very purpose of allowing ninety days for the filing of a certificate of loca-

(Testimony of Frank M. Ish.)

tion was to enable you to mark your boundaries, and get your exact description and your preliminary work, and have those matters in such shape that you could describe them in your certificate of location?

A. In a general way, yes.

The COURT.—I think he has answered; he entrusted it to this man.

Q. You got back from Colorado when?

A. I remember coming to the State, coming into Reno on the first day of January, but I don't remember when I got back there exactly, it was some time in January.

Q. It was some time in January? A. Yes.

Q. When did you first see this work that you saw done there on the side of the mountain?

A. The work that was alleged to have been the Dave Lewis Hope location?

Q. Yes.

A. I first saw that work some time in February.

Q. Some time in February?

A. Yes, 1902.

Q. Will you indicate on that photograph, in pencil, the point at which that work was situated that you saw then? (Complainants' Exhibit No. 3.)

A. If the Court please, there is another picture of the same mountain, and I think it is a much more preferable one, it is a better view of it.

(Testimony of Frank M. Ish.)

The COURT.—Put it on there, as near as you can. It is all approximately.

A. The work itself; I think that must be the work there; I cannot see very well; I take it for granted that is the cut.

Q. Just mark that some way, mark it "cut"?

(Point marked "cut" by witness.)

Q. Where were you when you first saw that work?

A. I was on the road coming into Tonapah from Weepah.

Q. Into Tonapah from Weepah? A. Yes.

Q. That is, you saw it from the road?

A. Yes, sir; I saw it from the road.

Q. How long after you first saw it before you went up there?

A. I am unable to say for certain.

Q. Well, to your best recollection?

A. I should say a month, if I recollect.

Q. A month before you went up? A. Yes.

Q. How did you happen to go up then?

A. I do not recollect; but I went up with some of the North Star people.

Q. Some of the North Star people? A. Yes.

Q. That was about when, in March or April?

A. Well, it seems to me it was in April, I cannot recollect definitely about that.

Q. You think it was in April?

A. I think it was in April.

(Testimony of Frank M. Ish.)

Q. After you saw that there did you make any inquiry as to who was doing it? A. Oh, yes.

Q. What did you find out?

A. I found out it was being done by Dave Lewis.

Q. You found out that it was being done by Dave Lewis?

A. Yes, sir; or had been done by him.

Q. Did you find that out as soon as you back to town? A. Yes.

Q. And then you didn't go up to investigate for a month? A. I do not think I did.

Q. Then you went up with North Star people; by North Star people who do you mean?

A. Mr. Harris and Mr. Golden and Mr. Ray.

Q. Was Mr. Ramsey there?

A. I don't recollect, it seems to me that he was.

Q. When you got up there what did you find?

A. I didn't see that cut at all; that is, I never made a close examination of that cut at all except from down below, as I speak about, from down town.

Q. The closest examination you have ever made of that cut was from down town?

A. Hold on! You wait until I get through.

Q. I thought you were through.

A. I was going to say I didn't see that cut at that time for a month after it was dug, and when I went up there, I believe I was not up there until it had been squared, as has been described in the testimony here.

(Testimony of Frank M. Ish.)

Q. Then you didn't see the cut before the work that Mr. Porter testified to having done was done there?

A. No, only to see it was on that hill.

Q. You didn't go up to investigate that cut from the time you got back to Tonapah until after the 24th of April, if, say, that was done from the 24th of April on? A. I do not think I did.

Q. You stated that you saw that cut first as you came in on the road from Weepah? A. Yes.

Q. Well, when you found out that Lewis was doing work up there on a claim, did you make any further investigation as to the boundaries or stakes, or cut, and see him and have any talk with him? A. No.

Q. You knew that that was the ground that you were claiming at the time, did you not? A. Yes.

Q. And you recognized that that Dave Lewis was the same name, at least, as that attached to the notice that you found up there when you went to make your location? A. Yes.

Q. Why didn't you look him up?

A. I didn't think it cut any ice at all.

Q. You didn't think it made any difference?

A. No, I knew that he had not done the work within the time, from the 26th of August.

Q. Did you know when you came back and saw that work there, and learned that Lewis was doing it, that your certificate of location describing the boundaries,

(Testimony of Frank M. Ish.)

and your location work, had not been filed, and that your location was not then perfected?

A. Why, I knew that it had been filed.

Q. You knew that it had been filed?

A. Yes; this certificate of location that is here.

Q. If that is the notice of location, and not the certificate of location?

A. I said yes, that I knew that had been filed, was so informed by my friend and agent.

Q. If that was your certificate of location, you knew that you had not filed any notice of location, didn't you?

Mr. METSON.—That is argument.

The COURT.—He only filed one, and that is the only one, whatever that is.

Q. If you had only filed one paper up to that time, up to the time that you discovered that Dave Lewis was working on your claim, didn't you, as a miner, know that your location was not then perfected?

Mr. METSON.—I object to that; the Court is to pass upon this.

The COURT.—Show what was done, and then it will be the duty of the Court to determine whether he had complied with the law; whatever he might say, you would have to judge by his acts. I think the notice speaks for itself, as far as that is concerned, whatever it is.

(Testimony of Frank M. Ish.)

Q. When you came back and found Dave Lewis working on your claim or came back here, work had been done there, and you ascertained that Dave Lewis was doing it, did you then know that to locate a claim you had to post a notice of location, and record it with the County Recorder? A. Yes, sir.

Q. And did you not then know that you had ninety days within which to make the discovery, mark your boundaries and do your preliminary work?

A. Yes.

Q. Did you not know that then you were required to file a certificate of location describing your boundaries, as marked, and your preliminary work, as made?

A. On that thing I was not clear at that time.

Q. At that time you were not clear on that proposition? A. No.

Q. After you came back and found that Dave Lewis was working on your claim, did you look up or consult anybody to ascertain whether or not your title was clear and perfect?

Mr. METSON.—I object to that; it is hearsay and incompetent.

Mr. GOODWIN.—It is an act on his part. My idea was this: That if he knew there should be two instruments, a notice of location and a certificate of location, and he came back and found another man working on the ground that he claims now, and that he claimed to own, it would have been a natural thing for him to have

(Testimony of Frank M. Ish.)

taken advise, or inquired into the situation, and ascertained what his real title was.

The COURT.—It is what he did; what he did is the legal point that would control, in my view of the matter.

Q. When you went up there you say this cut had been enlarged and widened? A. Yes.

Q. How wide was it when you went up there?

A. Well, I would not undertake to say; it seems to me it was widened out simply, and a hole sunk in the center.

Q. Was it 14 or 15 feet wide, something like that, from 12 to 15 feet?

A. It seemed to me it was about 10 feet, I don't know, that is my recollection now; I think there was a hole.

Q. How big was that hole?

A. It was about 4 by 6 or 4 by 7, something that size.

Q. Couldn't it have been 4 by 8?

A. It possibly might have been.

Q. How deep was it?

A. It was about six feet deep, my recollection of it.

Q. Could it have been eight?

A. I do not think it was; I was down in it one time, and got out without any trouble; I do not think it was 8 feet deep, it might have been 7 though; I don't believe it could have been eight.

Q. Now, take that as the point of discovery for the Dave Lewis Hope, and the notice claiming ground running northwest and southeast from that point, just

(Testimony of Frank M. Ish.)

slightly west of north, and slightly east of south, 1500 feet, that is, 500 feet north and a thousand feet south, how would that compare with the ground that you claim as the Ivanpah? A. Well, it would run—

Q. Practically the same, wouldn't it?

A. Very much the same, except in the distances.

Q. What would be the difference in distance?

A. I claim 700 feet; it is either 800 feet north and 700 south, or the reverse perhaps, from my monument, and that would make quite a difference in the length, and the extent north.

Q. Maybe we can get it this way: Is not your south end line close to what we call and what we claim here to be the south end line of the Dave Lewis Hope?

A. I don't know where you put that.

Q. Well, you said you saw a corner down there that was the southwest corner?

A. Well, you go farther south than I did; that stake would be considerable farther south than I went.

Q. How much farther south?

A. Probably two or three hundred feet; I only went to the Mizpah corner, the corner on the side line, rather.

Q. Well, supposing our south center is at the Mizpah line, or very close to the Mizpah line, and our claim runs north and south, as I have described it, just a little west of north, and a little east of south, would not it then be practically the same ground as covered by the Ivanpah?

Mr. METSON.—I object to that; I think the proof is that the alleged Dave Lewis Hope trespasses upon the

(Testimony of Frank M. Ish.)

Mizpah about half way, and that the assumption is different from the fact proven by the other side, as I understand it. The Mizpah runs east and west, and these other claims practically north and south. I understood that the testimony in chief was directed to the point that the south end line of the Dave Lewis Hope was very close to the end center monument of the Mizpah; that would make it intrude upon the Mizpah, and within the Mizpah lines.

Mr. GOODWIN.—The only question arises from this: They say now that our starting point is way up there on the mountain, that is what they are claiming, which will carry our location farther east. I think there can be no difference between counsel on the other side and ourselves, that if the location of the Dave Lewis Hope was made as testified to by Mr. Carr, that it covers practically the same ground as the Ivanpah.

Mr. METSON.—About half.

The COURT.—We will probably get at it quicker by asking the questions. You may proceed.

Mr. METSON.—Do you offer this plat as being a correct plat of your claim?

Mr. GOODWIN.—As near as we can plat it from our description, but that was not made from an actual survey.

Q. Will you indicate on the plat that you have drawn, Mr. Ish, in blue, the location of the cut that you discovered, or have you located that? A. I have.

(Testimony of Frank M. Ish.)

Q. Will you locate now the hoisting works of the North Star?

A. The hoisting works of the North Star were right there. (Indicating.)

Q. The hoisting works of the North Star are south of that cut?

A. Pretty near south of the cut, a short distance; well, a little southeast, close to it, south about 40 feet.

Q. How far east from the Mizpah ground up to the hoisting works, in your judgment, the North Star hoisting works?

A. It is about 300 feet, I think, a little over 300 feet from the Mizpah corner.

Q. Not more than that?

A. Well, I just was thinking about how the claims laid in there, and trying to arrive at it from that; it is at the corner, the Lucky Jim and the Triangle, the Triangle has its corner very close to the corner of the Mizpah, and we are right on the line of the Triangle, and about, a little bit more then half way to the west.

Q. In that cut was there a ledge, a vein?

A. In what one are you speaking about?

Q. In the one that is north.

A. My recollection of it is, it was simply a streak in the riolite discolored with manganese, of which there are a number, and they showed along in the road, at the cut of the road leading up to the North Star.

Q. Were not there some croppings just about this cut,

(Testimony of Frank M. Ish.)

croppings similar to the croppings above there, where you did your work? A. Somewhat.

Q. Now, as a matter of fact, are not the croppings right down from where you did your work, right down to this cut, and right down into the flat, more or less?

A. Oh, no, sir.

Q. The croppings are pretty heavy up there where you did your work, are they not?

A. Yes, pretty fair croppings.

Q. As you come down don't you find some other pretty fair croppings?

A. I never examined it very closely, but there is something above the cut, and above the North Star, a little further to the north and west, but it is not the croppings that we have in the Ivanpah.

Q. Now, you have indicated on this photograph the cut, can you distinguish just above the cut some heavy croppings?

A. I know what is there, but I cannot see on that photograph.

Q. Is not that in line with your croppings?

A. No, sir.

Q. What is the difference between those?

A. Those have a strike to the northeast and southwest, those croppings just above the cut, and the one where I located has a distinct course, distinct strike, and in the course of its strike it would come below the North Star tract.

Q. I am speaking about the character as croppings?

(Testimony of Frank M. Ish.)

A. They are not the same.

Q. As indicating the croppings of a ledge?

A. Yes.

Q. You would term them croppings, wouldn't you?

A. Which one do you refer to?

Q. The one just above the cut, which you say Dave Lewis excavated?

A. There was some croppings, they are of a different nature somewhat than the surrounding rock.

Redirect Examination.

Q. Counsel was asking you about the place where Mr. Ray worked being in line with the work that you say was done in February in this cut. Will you explain to the Court and state whether or not that work in the cut was on the strike or course of your vein, where Mr. Ray did the work?

A. No, it is not in the strike, not at all, the cut is not in the strike of the vein, that I did the work in the Ivanpah, at all.

Q. If the place where Lewis did the work in February is, it is a parallel vein some distance off then?

A. Yes, it would be a different strike.

Q. How far off?

A. It would be a difference—they would diverge at probably a hundred feet, or more, and continue to diverge as they went north.

Q. How long have you been mining?

A. I have been engaged in mining more or less since 1880; I have been actively engaged in mining since then.

(Testimony of Frank M. Ish.)

Q. You have had experience with values and ground over in Tonopah? A. Yes, sir.

Q. Does the colored streak in the cut that you say was dug on or about February, 1902, contain any values, mineral values?

A. I would not take it that it did; I don't know that it did or did not; it didn't look to me as though there was anything of value in it; I would not follow it at all.

Q. Your attention was called to a stake, or you testified here with reference to seeing a stake marked "Dave Lewis Hope," on a trail, subsequent to April or May of 1902; was or was not that stake in a monument?

A. It was not.

Q. Describe to the Court where it was situated, and how close to this trail that you testified to?

A. Why, it was about 12 or 15 feet away from the trail, and there was a little natural, just a little hummock, I won't undertake to describe it, just simply a natural hummock, some four or five feet long, and probably stuck up there a foot, and this stake was sunk in that, and some bowlders, I should say that there was probably a half dozen bowlders, ranging from four to six inches, piled around it, that was all.

Q. Point out to the Court the North Star working shaft, the present working shaft, on that large photograph, if you please?

A. This is the shaft and this is the engine-house. (Indicates.)

Q. What number is there marked on the photograph?

(Testimony of Frank M. Ish.)

A. Number 3.

Q. Can you point out to the Court there any of the other points that have been testified to?

A. The Ivaupah work location shaft is there. (Indicates.)

The COURT.—About how many feet west of the North Star shaft?

A. Oh, I should say about 400 feet, maybe a little bit more, and the location of the monument of the Dave Lewis Hope is up there. (Indicates.)

The COURT.—That would be about how far and in what direction from the North Star?

A. That would be north and east, quite a variation from north over to the northeast, and it would probably be 450 to 600 feet, some place there, I don't know just how far.

Q. In the neighborhood of 500 feet.?

A. Yes, it lays over the hill; probably more than 500 feet measured up that way.

Q. Mr. METSON.—Can you show the point where the stake was?

A. Yes, I can show the location of that stake; that is the last lease that took out ore, is right there, it is right in behind that. (Indicating.)

Q. The COURT.—What does this indicate. (Pointing.)

A. That is the Montana.

Q. About how many feet east of the Montana?

(Testimony of Frank M. Ish.)

A. The nearest location to any point is the assay office of the Tonopah Company, and from there up to there would be about 250 feet; I am approximating that also.

Q. (Mr. METSON.) The stake that you last testified to is the one that you say you saw there subsequent to April or May, 1902? A. Yes, sir.

Q. What is the strike of that streak of color in the Dave Lewis cut that you say was made in February, 1902?

A. Why, it is somewhere north, and probably a little bit northeast and southwest; no, hold on! If your Honor please, I have got to explain again my hesitancy in answering that thing is to square myself with that country, and the direction, and the points of the compass. Yes, it is to the north.

Q. (Mr. GOODWIN.) That is the strike in the Dave Lewis cut? A. Yes.

Q. Was the monument where you say you saw the Dave Lewis Hope location in the same place when you last saw it as when you first saw it? A. Yes.

Q. And about when did you see it last?

A. Why, within the last seven or eight months; I cannot say just when; I do not think I have been up there since I have been in Goldfield; seven or eight months ago, about.

Q. Seven or eight months ago? A. Yes.

Mr. LORIN O. RAY, called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. PITTMAN.

Q. What is your business?

A. I have been engaged in mining for the last twelve or fifteen years.

Q. Where do you reside now?

A. At the present time I am working a lease at Goldfield, and prospecting.

Q. How long have you been at Goldfield?

A. About five or six weeks.

Q. Where did you reside before going to Goldfield?

A. At Ray and Tonopah.

Q. Where is Ray?

A. Eight miles north of Tonopah.

Q. When did you first go to the Tonopah Mining District?

A. May 12th, 1901, I landed in Tonopah.

Q. Are you acquainted with the location designated in this case as the Ivanpah mine? A. Yes, sir.

Q. About when did you first become acquainted with that location?

A. Some time about the 12th or 13th of October, 1901.

Q. You may state the circumstances of becoming acquainted with it?

A. I was connected with Mr. Ramsey in some claims north of Tonopah, and was working on those claims at the time, and I came in town in the evening, and Mr. Ramsey told me that he had located me in a tunnel site on Oddie Mountain, and he said the first time—

(Testimony of Lorin O. Ray.)

Mr. GOODWIN.—I object to what Mr. Ramsey said.

The COURT.—Yes, as to what he said.

Q. Mr. Ray, please try and avoid what anybody said.

A. Well, I went on, and a few days later I went up to examine the ground.

Q. What ground?

A. This North Star tunnel site ground. It was located on the north side of Oddie Mountain, down in the flat, part of the ground; I went to the location monument and read the location. Prior to that, five or six months, this tunnel site had been located by Mr. Wils Brougher, T. L. Oddie and Mr. Gayhart; Mr. Gayhart had surveyed this tunnel site.

Mr. GOODWIN.—What has this tunnel site got to do with this matter?

Mr. PITTMAN.—It is preliminary.

Q. Go right along.

A. And I first went to the location. Mr. Oddie and Mr. Brougher and Mr. Gayhart had abandoned this tunnel site; I seen it had been located by Mr. Ramsey and Mr. Golden and myself and a man by the name of Catton; I began at the location notice went up the hill 300 feet, there found three small mounds of dirt that marked the first 300 feet of the North Star tunnel; in those mounds was struck little pieces of board about so long (measuring about a foot), marked "North Star Tunnel Site." I then went 300 feet further, and found three other monuments representing the second 300 feet of the

(Testimony of Lorin O. Ray.)

North Star Tunnel site, and went onto the top of the ridge, and there found three other monuments representing the same; on this ridge you can look to the north and to the south and to the east, and see all of Oddie Mountain, on the west slope, and north. I then went on still further south 300 feet, and found three mounds, and on through to the Mizpah claim, seeing this was the tunnel site, Mr. Ramsey had located, this taking me about 2500 feet from the location monument of the North Star, directly south. I then came back onto the hog back, where the third monument stood, of the 300 feet, and looked to the east; about 300 feet to the east of me stood a monument; I went to that monument, and in that monument stood a stake, and on that stake was written "Dave Lewis Hope Claim, August 26," and signed, "Lewis and Carr," the first part of the name I don't remember now. When I got up there I sat down and figured that if there was a claim in there covering this tunnel line of ours, as a tunnel, as I thought at that time, held no ledges cropping on top of the ground, that it would be very important ground to have; this being the only monument that I seen on the slope of the mountain after I left the northeast corner of the Mizpah mine, I stepped from that monument, supposing to step three foot at a step, down to the North Star tunnel line to the west; and as near as I could get at it it made it about 300 feet; then I went from the brow of the hill further to the west, about 150 feet, and seen a monument; I went down to this monument, and saw

(Testimony of Lorin O. Ray.)

that it was located the Ivanpah claim by F. M. Ish; then stepping back to the tunnel line to the east from this monument, I figured it at about 150 or 200 feet; going then on back to the Dave Lewis Hope claim, I figured there was no chance to get any ground between the Ivanpah and Dave Lewis Hope claim. I then went and read the notice of the Dave Lewis Hope again, and it was located running 500 feet northwest, and one thousand feet southeast; there was one monument there with a post in it. I then went across from there—which stood up close to the apex of the mountain—I then went across from there to the Hudgens tunnel, going a thousand feet almost to the southeast, and saw no stakes and no monuments; there was no stakes and no monuments with the exception of the one, the Dave Lewis Hope, and the one on Mr. Ish's claim on the west side of Oddie Mountain, until you got to the Mizpah lines, or down to the Lucky Jim corner.

Q. Did you ever have any further dealings with this Ivanpah location?

A. I did; along about the last of October, I was at that time working for Mr. Oddie and Mr. Peters on the lease, and about the 28th day of October I quit working for them, told Mr. Peters that day that I had some work to do, and I would have to quit, and the next day or that evening, Mr. Ramsey and I had a talk about the tunnel site, and he said "You had better go over there and go to work," so on the 29th I went over there and went to work on the tunnel site.

(Testimony of Lorin O. Ray.)

On the evening of the 29th, I think it was, I came into town and saw Mr. Ish, and he told me he was going to start to Colorado in a few days, and that he would like for me to do this work on the Ivanpah claim; I told him I would; he says "Croslett will go and show you where I want the work done, and furnish you the tools and powder to do it with." The next day I went back over the tunnel line, across the Mizpah, there was a kind of trail over there over the tunnel line, and came down where the monument was, and looked the ground over, preparatory to going to work; went back to the tunnel site and went to work. The next day Mr. Croslett furnished me tools and ammunition; it was very cold weather at that time, and I took them up the next morning with Mr. Croslett, and laid them there where he told me he wanted the work done. I went back to the tunnel site and went to work, worked until noon came, went back to work up on the hill in the afternoon, as it was warmer in the afternoon than in the forenoon. Up till the 23d of September, I spent the greater part of the time on that mountain, either on Mr. Ish's claim or on the tunnel site. Walking up that way and going over the mountain, I came from the tunnel site up over the mountain down to Mr. Ish's work, and then from Mr. Ish's work down town, and for the month of September, 1901, I don't think there was four days I was not over that mountain.

Q. What kind of work did you do?

(Testimony of Lorin O. Ray.)

A. The work I done for Mr. Ish was a cut run into the hill a little on the incline, about four foot at the bottom, and I would judge about 15 feet long, leaving the face of the cut about ten foot to 11 or 12 foot, or the opening up the ledge in the face of the cut.

Q. Did the ledge show in the bottom of the cut to the face?

A. It did, sir; from the bottom to the top, in the face of the cut.

Q. What kind of a vein was it that you cut there?

A. The ledge is about, I should judge three to four feet wide on top, crops about 20 or 30 feet; a part of it is a very dark, looks like burnt up porphyry, and the other is a lighter color. I have taken four assays from that myself, they run from a dollar twenty to four eighty, four assays.

Q. What did the values consist of, what kind of metal?

A. Gold and silver.

Q. Do you know where this cut situated north of the North Star shaft is; are you familiar with that cut?

A. Yes, sir.

Q. When was the first time you ever saw that cut?

A. The first time I saw that cut was some time, I think, about the 15th of February, 1902.

Q. What is the character of the ground, the contour of the ground where this cut was made?

A. Well, I would call it a kind of slide rock, or an

(Testimony of Lorin O. Ray.)

overflow that has tumbled down from the mountain there.

Q. Can this cut be seen from the business portion of Tonopah? A. Yes, sir.

Q. After the cut was made, was the cut visible from this hog back that you went over? A. Yes, sir.

Q. Was that cut at that point in the month of December, was there any cut there?

A. No, sir; there was not; the trail that I went over time and again in December, went right to the side, not more than three foot from where that cut was placed afterward; there never was any cut in that mountain during the month of December, or any time previous to that.

Q. When did the cut first appear?

A. The cut first appeared in February. The way I came to notice this was that I was coming in from Ray, and at that time we had a man working in the tunnel, and we were thinking then, the North Star people were thinking at that time of buying this claim of Mr. Ish, and I asked the man that was working on the tunnel what that work was up on the hill, and he said that Dave Lewis was having some work done.

Q. What month was that in?

A. That was in the month of February, 1902. I says, "What is he having work done, what work is he having done," and he says, "I suppose it is the old Dave Lewis Hope claim."

(Testimony of Lorin O. Ray.)

Q. (Mr. GOODWIN.) Who was this?

A. Mr. Canters, the man that was doing our work.

Q. When was the last time that you were over that portion of the hill near where the present North Star shaft is, prior to seeing this cut of the Dave Lewis Hope?

A. Prior to that time?

Q. Yes, prior to the time of seeing it, the last time you were there?

A. I was over the ground several times in January. As I say, out at Ray at that time, I would come in and come to the tunnel, and go in and see how the work was going on, and while in town I would probably go up and over the ground, and go down, and I generally went from town over the hill that way.

Q. The last time that you were on this portion of the hill prior to seeing this cut was in January?

A. Some time in January; I suppose in January I was over that trail four or five times.

Q. What were you doing up there in the month of January?

A. Well, I was interested in the work and interested in the company; I was helping to pay the men that was doing the work; and naturally would be looking after my interests; that is what I went there for principally; in fact, the work was left with me there, for me to look after.

Q. Do you know whether or not any portion of what is known as the Lucky Jim claim lapped onto the Ivanpah claim?

(Testimony of Lorin O. Ray.)

A. The Ivanpah lapped onto the Lucky Jim; the Lucky Jim was a prior location.

Q. When did you find that out?

A. I found that out after Mr. Ish had sold this claim to the Tonopah Company, or to the North Star Company. The way I came to find that out, Mr. Blumenthal and myself were dickering with Mr. Ish for this claim.

Q. What month were you dickering with him for this claim?

A. I think it was in January or February, I ain't sure which; and Mr. Ish I think at that time wanted a hundred thousand shares in the Company if we incorporated; and Mr. Blumenthal says, "What do you know about the Ivanpah claim?" "Well," I says—

Mr. GOODWIN.—I object, your Honor. Objection sustained.

A. Well, anyhow, I went up there the next day and examined the Ivanpah claim, and examined all the corners; took the Lucky Jim corner and saw how much it cut off the Ivanpah corner, seen how much the Silver State cut in; went down on the other side and seen where everything else cut; went back and told Mr. Blumenthal—

Mr. GOODWIN.—I object to that. Objection sustained.

Q. Well, you saw that, did you? A. Yes.

Q. How close to the North Star working shaft is the upper end of the Lucky Jim corner.

(Testimony of Lorin O. Ray.)

A. About 45 feet.

Q. On that trip when you were examining the corners of the Lucky Jim claim had this cut been put in the hill by Dave Lewis.

A. It had not.

Q. Could it possibly have been there without you seeing it? A. It could not.

Q. Now, when is the last time that you saw this monument marked "Dave Lewis Hope"?

A. When was the last time I saw it?

Q. Yes. A. About four months ago.

Q. Was it in the same condition that it was when you first saw it?

A. The same place as when I first saw it.

Q. How far would you consider that stake is from the top of Mount Oddie, the apex if it, the point, approximately?

A. Well, I should think it was over 125 feet, something near that; of course, I never measured it.

Cross-examination by Mr. GOODWIN.

Q. Are you interested in the company, Mr. Ray?

A. I am not now, no, sir.

Q. Have you been at any time? A. Yes, sir.

Q. When?

A. I was interested until last winter some time.

Q. What interest did you hold?

A. At first I held a quarter interest, and at last I

(Testimony of Lorin O. Ray.)

held an eighth; I sold a quarter interest to Mr. Blumenthal.

Q. When I say the company, I mean the defendant company?

A. Yes, sir, the North Star.

Q. Do you know whether or not the North Star Company acquired the Dave Lewis Hope claim, or got any conveyance from Lewis?

A. No, sir, they did not.

Q. Did they directly or indirectly?

A. No, sir, not that I know of.

Q. Did Davis get a conveyance from Lewis?

A. I don't know anything about it.

Q. You don't know anything about it?

A. No, sir. I had very little to do after the company was incorporated, only held my portion of the stock.

Q. Did you ever examine for stakes there around the Dave Lewis Hope claim? A. Yes, sir.

Q. And could find none?

A. No, sir; only this one monument; the only one that was ever on that part of the hill at that time.

Q. The only one? A. Yes, sir.

Q. You noticed particularly the date of the location? A. Yes, sir.

Q. It was the 26th? A. The 26th.

Q. You knew at that time that the time had not expired, didn't you? A. Yes, sir.

Q. You knew during all that time that Lewis was

(Testimony of Lorin O. Ray.)

claiming a mine up there on the side of the mountain, did you not?

A. Yes, sir, I did; I knew up till December that he was claiming a mine; he had none after that time; up till December he claimed a location up there, and never done his work, and he had none after that.

Q. That is your legal construction?

A. I know, because the work never was done.

Q. I say that is your legal construction of it?

A. I don't know whether you call it legal or what you call it, if a man is there every day and sees it, he don't have to be a miner.

Q. Well, didn't you know that he claimed it after December?

A. Didn't I know that he claimed it after December?

Q. Yes.

A. He may have claimed it, he may claim it yet; he is dead, and he may claim it yet, I don't know.

Q. Don't you know, personally, that he claimed to own a mine up there after December?

A. Well, I think he did, yes.

Q. Didn't you personally know that at least in February, he was doing work there?

A. Yes, sir; he had men doing work, he didn't do the work himself.

Q. You knew that as a fact?

A. Yes, sir; I know that the work was done there.

Q. You saw them at work. did you?

(Testimony of Lorin O. Ray.)

A. I did not.

Q. How do you know that he had?

A. I know the work was done.

Q. You know the work was done? A. Yes.

Q. How do you know that he had it done?

A. You will find that out later on.

Q. How do you know that he had it done?

A. How do I know?

Q. I want to treat you perfectly fair.

A. Well, ask the question again.

Q. How do you know that he had the work done?

A. Well, how I know is, that I know people that paid for the work, and know the men that did the work.

Q. Who paid for it?

A. Mr. Davis paid for it.

Q. Mr. Davis paid for it? A. Yes, sir.

Q. On whose account? A. For Mr. Lewis.

Q. Who were the men that did the work?

A. Mr. McCune and Mr. Enright.

Q. You knew that he did work there in February at least? A. Yes, sir.

Q. And paid for it? A. Yes, sir.

Q. And don't you know of his asserting other claims to the property? Don't you know that he asserted other claims to the property?

A. To what property?

Q. To what is known as the Dave Lewis Hope claim, up there on the hill, whatever it may be?

A. No, sir, I don't know anything about it.

(Testimony of Lorin O. Ray.)

Q. Don't you know, and didn't you as Justice of the Peace down there, acknowledge deeds that he made to certain parties to whom he professed to sell this property?

A. Yes, sir, I did.

Q. You knew then that he was asserting title?

A. A Justice of the Peace is not supposed to know whether a man has got title or not.

Q. A Justice of the Peace is not supposed to know much, Mr. Ray, I will admit that; but you knew that he claimed the right to sell that, didn't you, when you were acknowledging those deeds?

A. Yes, sir; I ain't supposed to know what man owns property when he acknowledges a deed, unless some lawyer comes in that knows a whole lot and tells me.

Q. Now in June, 1902, did you know that he or his grantees were asserting interests or claims to that property?

A. Sir?

Q. In 1902, June 10th, did you know that he or his grantees were asserting an interest in that property, or claiming it?

A. I know him; I don't know his grantees; I don't know what you mean by that.

Q. Parties to whom he may have conveyed?

A. No, sir; I do not; as I say, I know nothing about what transaction occurred with the company after it was incorporated, with Lewis or anybody else.

Q. The company was not incorporated until July, was it? I think it was the 2d of July or somewhere

(Testimony of Lorin O. Ray.)

along there. Now, on the 10th of June wasn't a notice served on you, while you were up there on the ground, just as you were starting squaring off to sink the North Star shaft? A. No, sir.

Q. Was a copy served on you?

A. Not that I remember of.

Q. Did you hear of a notice being served by Doctor Porter on the people who started to sink that shaft there about the time they commenced to grade for the first work they did?

A. No, sir, this is the first time I ever heard of it.

Q. Is this the first time you ever heard of it?

A. Yes.

Q. Did you hear of a notice of some kind being nailed up there and handed to the foreman, and a copy enclosed and sent to the manager or president or secretary of the corporation, whoever was doing that work there? A. I did not, sir.

Q. You never heard of that?

A. No, sir; as I say, after the company was incorporated, I left the whole matter to Mr. Golden and Mr. Ramsey, and others of the board.

Q. That was before the company was incorporated; I am asking now with reference to the 10th of June; the company was not incorporated until July?

A. No, sir; I know nothing about it.

Court adjourned until July 14th, at 10 A. M.

(Testimony of Lorin O. Ray.)

Court convened, July 14th, 1904, at 10 A. M.

Mr. GOODWIN.—Mr. Metson, there is one fact, an allegation that your application was made September 19th; we allege that you made your application the 19th day of September; you deny you made it on the 19th, and allege that you made it on the 14th, and published it on the 14th or prior to the 19th of September. I would like to have it appear that the fact is that the application for patent was filed on the 14th of September, and the first publication was made on the 19th of September.

The COURT.—It is admitted that those are the facts; that is a matter there should be no controversy about.

Mr. PITTMAN.—Those are the facts in regard to it.

Cross-examination of Mr. L. O. RAY (resumed).

Q. Mr. Ray, you mentioned about going along a trail past the point where this cut was run?

A. Yes, sir.

Q. That was the fact, was it? A. Yes.

Q. Where did you go from, and where did you go along this trail?

A. I went from the town up over the Mizpah, coming onto the North Star tunnel line, and this trail followed over the North Star tunnel line.

Q. Where did this trail go to, what was its objective point?

A. It seems as though the trail was really blazed by the surveying and marking out of the tunnel line.

(Testimony of Frank M. Ish.)

Q. Is it not a trail traveled in going from one locality to another?

A. There was very few trails or very little traveling on the hill at that time.

Mr. FRANK M. ISH, recalled by defendant, testified as follows:

(By Mr. METSON.)

Q. Where were you born?

A. I was born in California.

Q. You say you put a notice on or about the 10th of October on this Ivanpah location? A. Yes.

Q. State whether or not any name was given in that notice to the location? A. Yes, sir.

Q. What? A. It was called the Ivanpah.

Q. Can you state the contents of the notice?

A. Well, I can in a measure; I think I can pretty well.

Mr. GOODWIN.—I object; in case it was recorded, the record is the best evidence.

Mr. METSON.—It is what is called a certificate.

The COURT.—I will allow it.

A. It read this way: "I, F. M. Ish," or "Frank M Ish," I don't remember which, "hereby claim 500 linear feet on this ledge or lode of mineral-bearing quartz, running 800 feet northerly and 700 feet southerly, together with 300 feet on each side of the vein. This claim is

(Testimony of Frank M. Ish.)

situated on the west and northwest side." I think I described it as the Tonopah Hill or Oddie Mountain, I don't remember which, my recollection is not clear about that; I remember of bounding the claim on the south with the north side line of the Mizpah, and connecting it also with the Lucky Jim and Triangle, which I lapped; and named it the Ivanpah, dated it and signed it.

Q. What date was on it, if any.

A. 10th day of October, 1901.

Q. You speak of the Mizpah; what mine was that?

A. That is the Mizpah claim belonging to the Tonopah Mining Company.

Q. State whether or not that was a well known or little known claim?

A. It was the best known claim in the district; it was then being extensively worked, and as I understood it at that time, was one of the first locations in the district, one of the best known in the district at that time.

Q. What do you mean by best known—a few people knew it best?

A. No, the general public knew it best; it was more generally known than any other claim in the district, and at that time was a great producer.

Q. As to the people who were there in the district, did a few know of this mine, or a majority; describe generally what you would designate as the proportion or number who would know this claim, or not know it.

A. It was generally known; I suppose anybody at all

(Testimony of Frank M. Ish.)

familiar with the district knew of the distance and location of the Mizpah claim; it was a noted claim.

Q. Now, I neglected to ask you the other day the distance from one monument to another when you were describing that claim.

Mr. GOODWIN.—I think he gave the distance, 750 feet down to the center, and 750 feet down to the corner.

The COURT.—I think he stated the distances, but there is no objection to having it repeated, if there is any doubt about it.

Q. I have a doubt in my mind about having proved the length. Just describe as quickly as you can the length and breadth of the claim.

A. Commencing at the northeast corner, run 600 feet west to the northwest corner, then 750 feet southerly to the west center side line, then 750 feet southerly to the southwest corner; thence easterly 600 feet to the southeast corner; thence northerly 750 feet to the east side center; thence 750 feet to the place of beginning.

Q. And one other question I neglected to ask you, or I don't know whether I did ask you or not. State whether or not there was any monument at the time you were on this ground in October at the place or near the place where this Dave Lewis Hope work was done, this cut that we asked about? A. In October?

Q. In October, was there any monument at that cut, or near where the cut was afterwards made?

A. No, sir, there was not.

(Testimony of Frank M. Ish.)

Cross-examination by Mr. GOODWIN.

Q. Was the Mizpah at that time one of the what was known as the Butler group, Mr. Ish?

A. Why, yes, it was located by Butler.

Q. And the Butler group was just as well known there as the Mizpah, wasn't it?

A. I never heard it spoke about more than as the Butler group, but it was a notorious fact that it was located by Butler.

Q. He had a group of mines there generally referred to and known as the Butler group, didn't he, at that time?

A. I never heard it referred to in that name.

Q. One of which was the Mizpah? A. Yes.

Q. Now, you posted that notice on the 10th of October? A. Yes.

Q. You posted it yourself? A. Yes.

Q. After you posted it, what did you do with it? Did you make a copy? A. No, sir, I did not.

Q. You made no copy of the notice that was posted?

A. Well, now, I believe that I did, but the copy of the notice, I mean a certificate of it that I—I don't remember, I don't recollect certain whether I copied the notice then or not.

Q. Did you have your notice of location recorded?

A. Did I?

Q. Or did anybody on your behalf have your notice of location recorded? A. Yes, sir.

(Testimony of Frank M. Ish.)

Q. Did you have any instrument recorded relative to the Ivanpah other than your notice of location, prior to the 1st day of July, 1902? A. Yes.

Q. Well, now, did you?

A. State the question again.

Q. Did you have any document recorded other than your notice of location, from the 10th day of October, 1901, to the 1st day of July, 1902?

A. I don't remember the date of the filing of the amended certificate of location, but other than that there was no paper recorded.

Q. Did you ever look over the records there in Tonopah, the district records, with reference to the Ivanpah claim?

A. I think that I did, but don't just remember when.

Q. Don't you know as a fact, Mr. Ish, that from the 10th day of October, 1901, to the 1st day of July, 1902, there was not on those district records any record relative to the Ivanpah claim, excepting the record of your notice of location? Don't you know that to be the fact?

Mr. METSON.—The record is the best evidence.

Q. He examined it, and we want to get this thing straight.

A. I don't know whether there was or was not.

Q. Don't you know as a fact, that during that period of time, you never prepared and presented to the recorder for recordation anything but a copy of your notice of location?

(Testimony of Frank M. Ish.)

A. I remember as a fact that I did not present to the recorder anything myself, individually, anything to be recorded.

The COURT.—There was but the one paper recorded?

A. That is all there was.

Mr. GOODWIN.—What I want to get at is this: At some period of time, I don't know when, but at some period of time, that notice of location, which was recorded as a notice of location, and which the District Recorder certified time and again as a certified copy of the notice of location, by some metamorphosis, changed into a certificate of location.

The COURT.—He did not take that to the County Recorder; he never took but one paper; so far as he knows, there never was but one paper, whether it be called a certificate of location or notice of location.

Q. Now, Mr. Ish, will you tell the court when that notice that was recorded on the 8th day of January, 1902, first came to be described as a certificate of location?

A. I cannot understand what you mean; I do not know what you mean by "first came to be described."

Q. For a long time didn't you consider that record there that was made the 8th of January, a copy of your notice of location? A. Why, largely, yes, sir.

Q. Now, when did you commence to consider that not a notice of location, but a certificate of location?

(Testimony of Frank M. Ish.)

Mr. METSON.—I object to that, may it please the Court, as assuming something not proven, and asking for his consideration.

The COURT.—I will allow the answer.

A. As near as I could remember, as soon as it was recorded I always considered it was a certificate of location; and it went to the record as a certificate of location, and was such.

Q. Didn't you know that the record as made there did not contain across the top of that, or heading that notice, the words "Certificate of Location"?

A. I do not know, sir, that it did not.

Q. Haven't you seen that record when it did not contain that description, "Certificate of Location"?

A. No, sir, I have not; I never did.

Q. Did you ever see the record with "Certificate of Location" on there?

A. I am utterly unable to answer you whether I did or did not.

Q. You don't know whether or not the words "Certificate of Location" are on the record to-day or not?

A. I do not positively know; my impression is that I saw the record, and that it was there, but I do not know for certain.

Q. Then there is no question, Mr. Ish, but what that paper recorded the 8th of January, is the only paper that you recorded from the 10th of October, 1901, up to

(Testimony of Frank M. Ish.)

the 1st day of July, 1902, in relation to the Ivanpah claim? A. I think so, yes, sir.

Q. Will you indicate on this photograph, as near as you can, the corner post that you said you saw down there in the flat somewhere, marked the "Dave Lewis Hope." (Complainant's Exhibit 3.)

A. Yes, I think that thing lay, with reference to this lease, about there somewhere. (Indicating.) I cannot say whether this is the dump that laid alongside of there or not, but about there.

Q. Just mark that, please; mark it "I. D. C."

(The point is so marked on Complainant's Exhibit No. 3.)

Q. What were the marks on that corner?

A. I don't remember.

Q. Only that it indicated the Dave Lewis Hope?

A. That is all.

Q. Now, taking that as a corner; that is, assuming that it was the southwest corner of the Dave Lewis Hope, and projecting a claim 1500 feet in a northwesterly direction, slightly west of north, where would it take it? Indicate on this photograph, with reference to the Ivanpah ground.

Mr. METSON.—I object to any such assumption.

The COURT.—Well, I will allow the question.

A. It is quite a wide open thing to lay a claim that way.

Q. Assuming this; this is simply speculation. As-

(Testimony of Frank M. Ish.)

suming that is the southwest corner of the Dave Lewis Hope, and that the Dave Lewis Hope claim lay northwest and southeast, being just slightly west of north, where would a claim projected 1500 feet from that corner on that course carry you? Just indicate the general direction by drawing a line. A. Across here.

(Marking on Complainants' Exhibit No. 3.)

Q. It would come some place across as you indicated there? A. Yes.

Q. Now, give us the directions of north and south, that is the strike and line on that photograph which indicates your idea of north and south on that photograph.

A. (Indicating on Complainants' Exhibit No. 3.) I will say I am always confused on that hill.

The COURT.—Which is north on that photograph?

Mr. GOODWIN.—North lays across the photograph, as we understand.

Q. Come to this large photograph for the purpose of getting the direction. We understand north and south lies across the country that way. (Indicating on large photograph.) Now, if your Honor will notice, there is a range back there, and here is the hog back. Indicate to the Court whether or not the point designated by my finger there as a point on the hog back west of Mount Oddie, is the point indicated by my finger on the photograph, just east of the point indicated by you as your discovery point? A. That is the same hog back.

Q. Then, if the pencil as you laid it there is north

(Testimony of Frank M. Ish.)

and east on the large photograph, would the pencil as laid on the smaller photograph represent the same line?

A. Same thing, yes, sir.

Q. Now, will you please indicate by marking that line on the smaller photograph (Complainants' Exhibit No. 3), north and south.

A. Well, I should say in here, about as near as I can put that, north and south would be like that. (Marks line on photograph.)

Q. Now, if that is approximately a north and south line, taking the point as indicated by you as the southwest corner of the Dave Lewis Hope, and projecting a claim in a northwesterly direction, slightly west of north, just indicate there where the west side of the claim would be.

A. Well, I could not tell about that; to where it would be the west side line?

Q. Yes.

Mr. PITTMAN.—Is there any evidence as to the southwest corner whatsoever?

Mr. GOODWIN.—This is all hypothetical; he says he saw a stake down there, and he is locating where he saw that stake, and I am assuming that is the southwest corner of the Dave Lewis Hope, and on that assumption this is all being made.

A. That line on that assumption would be somewhere in there; I could not tell how much it would deviate. (Indicates.)

(Testimony of Frank M. Ish.)

Q. Now, Mr. Ish, would such a location cover approximately the ground that was covered by the Ivanpah?

A. Well, assuming that that corner was a monument, I suppose it would cover a large part of the Ivanpah.

Q. What you have said with reference to that assumption would be true with reference to any assumption; that would place the southwest corner of the Mizpah down in that immediate neighborhood?

Mr. METSON.—We do not think it is competent to assume these matters.

The COURT.—You cannot tell where the corner is unless you assume it; there is no survey and no map, and you will have to assume it if you run it at all. The courses and distances have not been defined in any other way, except upon the assumption that it starts in a certain place. I see no way of proving either one of the claims by any definite testimony. A map would help the witnesses materially in the testimony; we would have something as a basis to go on, and I have been liberal in this, for the reason I did not see any other way of getting at it in the way it is presented. (Question read.)

A. Well, it would take a considerable part of the east side of the Ivanpah claim.

Q. Now, the claim as we have described the Dave Lewis Hope, and by "we" I mean the witnesses on the part of the plaintiff, don't you understand that that

(Testimony of Frank M. Ish.)

claim as so described, practically takes in the Ivanpah ground?

A. No, sir; the claim as described as the Dave Lewis Hope, you mean as you described it?

Q. Yes.

A. Taking the location cut that you claim, which is near the North Star shaft?

Q. Yes.

A. Well, I suppose that would cover a considerable portion of the Ivanpah claim.

Q. Are you a stockholder, Mr. Ish, in the defendant corporation? A. Yes, sir.

Q. To what extent?

A. Why, I own about some forty odd thousand shares.

Q. At what capitalization?

A. A capitalization of 750,000.

Q. When did you become a stockholder?

A. It was in June, I think, the latter part of May, or June 1902.

Q. It was as soon as the corporation was organized?

A. Yes, sir.

Redirect Examination.

Q. Was this post that you speak of near this trail, was that marked "Dave Lewis Hope" or "Mizpah Intersection? A. It was marked both, if I recollect.

Q. Well, give us your best memory on that?

A. I think it was marked just that way, Mizpah In-

(Testimony of Frank M. Ish.)

tersection of Dave Lewis Hope. I know now, recall quite distinctly, that it was marked Mizpah Intersection on there; also my recollection it was marked Dave Lewis Hope, or might have been this way, Mizpah Intersection or Dave Lewis Hope.

Q. When did you see that post?

A. I first saw that post, I think it was in June, 1902.

Q. Now, you have been asked about notices of location, and about the records; did you ever know of a notice of location record being changed in any way?

A. No, sir, I do not; I never heard that it was changed, and never knew anything about any such transaction as that.

Q. Did you ever cause any change to be made on the record?

Mr. GOODWIN.—You misunderstood me; I do not intimate there is any change on the record; I do not think there is; what I mean is, that there is just the one paper.

Q. Now, have you told Judge Hawley all that you know about the notices of location, or the records of location; if not, tell the whole thing.

A. I think I have told about the record, of the posting of the notice on the Ivanpah, and how it was recorded, how it was done by George Croslett at my request.

Q. Do you know anything further about it?

A. I do not; that is, about the recording.

Mr. JOHN McCUNE, a witness called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. PITTMAN.

Q. What is your business?

A. I guess you would have to call it a miner and prospector; I am a propsector, you might say.

Q. How long have you been a prospector and miner?

A. Ever since 1879; ever since I left my father and mother.

Q. How long have you been in the State of Nevada?

A. Well, I have been in the State of Nevada I guess about, I think in 1890, if I remember right.

Q. Were you ever in Tonopah, Nevada?

A. Oh, yes.

Q. When did you go there first?

A. Along about June, 1901, I believe.

Q. Did you know a man there by the name of Dave Lewis? A. Yes.

Q. When did you first meet Dave Lewis?

A. In Tonopah.

Q. About when, do you know when you first met him?

A. Met him just about the time I came in there; seen the old gentleman off and on, and afterwards got acquainted with him.

Q. Did you ever do any work for Dave Lewis?

A. I did.

No. 1241

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FOR THE NINTH CIRCUIT.

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JURY, THOMAS W. CHANDLER,
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NEL AND DEVELOPMENT
COMPANY (A CORPORATION),

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(Testimony of John McCune.)

Q. What work was that?

A. Well, I worked a few shifts up there on a claim called the Dave Lewis Hope, I believe, Lewis Hope, would not be positive whether there was a Dave attached to it or not.

Q. Where was that claim?

A. It is on the North Star ground, what they call the North Star ground now.

Q. Do you know where Oddie Mountain is?

A. Yes.

Q. How does this claim lie with reference to Oddie Mountain?

A. It lays right on Oddie Mountain.

Q. When did you do this work?

A. I would not be right positive about the date; but if I remember right it was along about the first of February.

Q. What year? A. 1902.

Q. What did this work consist of, what kind of work was it?

A. It was a crosscut you might say; an open cut.

Q. Now can you describe any way so the Judge would know about where on that hill that cut was put?

A. Well, I don't know.

The COURT.—Can you describe it with reference to any other work, or monument?

Q. Something that is there now, for instance?

A. Something that is there now?

Q. Yes.

(Testimony of John McCune.)

A. Well, I will tell you; I was only up there once after I done this work, after this outfit started to work there, and the work that we done was below their shaft, that is, the first shaft they started.

Q. Is the hoist on that shaft now?

A. Well, I don't know; I haven't been around on there for these last two years, but I was up there once after I done this work; I only come in and out of Tonopah once and a while for supplies; I am not staying right in Tonopah, and I am not posted on there, on anything of the kind, for I am in to-day and out to-morrow; I come in there for supplies once in a while.

Q. You know where the North Star shaft is on Mount Oddie?

A. The first shaft they started I know where it is; may have started a dozen more for all I know.

The COURT.—Where was this point with reference to that North Star shaft; was it close to that?

A. What?

Q. Was it close to the North Star shaft, the work you did? A. Yes, wasn't very far from it sure.

Q. When did you go up there; you think you went up after you did the work one time, when was that?

A. I don't know, it was probably a month or six weeks after I done the work; would not be right positive.

Q. How did the cut look then when you went back up there? A. It was covered up.

Q. What was it covered up with?

A. With a dump, the company dump, I suppose.

(Testimony of John McCune.)

Q. Now, did you use any powder and steel in doing this work? A. Yes.

Q. Where did you get that powder and steel?

A. Davis & Lothrop's, I guess.

Q. Who showed you where to go to work?

A. Dave Lewis.

Q. Did Dave Lewis go up on the hill with you?

A. Yes.

Q. Did Dave Lewis show you any monuments or anything up there?

A. Well, he showed me the distances; showed me what he called the location monument, and I didn't even look at the notice; he showed me one, and he says, "This is my location monument," and we just stood there, and he said, "There is another monument," so I didn't pay much attention to the monuments, to tell the truth, but this location monument I did.

Q. Where was that location monument?

A. Well, it was up on the ridge, on the ridge there, about, I guess, north of where we done the work.

Q. About how far north would you figure it?

A. It might be a little bit west of north.

Q. About how far?

A. I didn't have any compass for that.

Q. How far would you guess it to be?

A. Well, I would guess it probably 300 feet, some place in that neighborhood.

Q. Did you see any other work on the top of that hill when you went up there that day?

(Testimony of John McCune.)

A. Well, down below, there was a little work done there; I spoke to old Dave, says I, "Whose work is that down there," and he says that—

Mr. GOODWIN.—I move to strike that out what they said there, and object on the ground that unless the declaration is made in the presence of a co-locator, or some of the plaintiffs in the action, it cannot bind us.

The COURT.—Not the objection and an exception, and I will take it, subject to the objection.

Q. What was that conversation; what about that work?

A. We went up to the location monument, I made the remark, says I, "Dave, whose work is that down there?" and he says, "That ain't on my ground at all"; so I didn't go down and investigate it at all.

Q. Which direction was that work from the location monument?

A. Well, west, you might say a little west.

Q. Well, about how far west, up or down the hill?

A. Down the hill.

Q. Down the hill? A. Yes.

Q. Could you see from where you were whether it was a shaft, or cut, or what it was?

A. I should judge, I thought it was a cut; that it, I wasn't down to the place, and the work at all, but I supposed it was a cut running into the hill.

Q. How far was that cut where you made the cut?

A. Well, I guess it would be a little less than the location monument.

(Testimony of John McCune.)

Q. A little less than the distance of the location monument?

A. It was down the hill; well, you could safely say 300 feet.

Q. Did any one assist you in doing this work?

A. Yes.

Q. Who was it? A. Enright.

Q. When you went up to do this work was there any cut where you started this cut in?

A. There was a little work there, not anything to speak of.

Q. A little work? A. Yes.

Q. How much work was it, a foot deep?

A. Oh, it was just a little work done; that is, you could not call it work, it was just enough to show that somebody had been on the ground, I guess.

Q. Been scratching there?

A. Well, that is all it was; it wasn't no location work, or anything like location work; I could not call it location work at all.

Q. How deep did you say this hole was when you got there? A. Which hole?

Q. The work you found when you got there?

A. Well, it didn't exceed a foot, I said, I guess.

Q. How wide was it?

A. Oh, it was just enough to show that there was somebody there, it was kind of drawn, or shoveled, the dirt, or I don't know whether they had a shovel at all or not.

(Testimony of John McCune.)

Q. Who paid you for this work?

A. Dave Lewis.

Q. Do you know when he paid you?

A. He paid me about, I think it was within the next day sometime.

Q. The COURT.—The next day after doing the work?

A. Yes; it was along in the evening some time; it was next evening, I believe.

Cross-examination by Mr. GOODWIN.

Q. You say this cut that you have testified to was south, was it, of the point where they started their first shaft, the North Star people started their first shaft?

A. What cut is that?

Q. Where you worked? A. South.

Mr. PITTMAN.—I did not understand him to say that.

Q. Do you know where the North Star Company started their first shaft?

A. Yes, I was over the ground once after I done the work.

Q. When they first started their shaft?

A. Yes, the first shaft they started.

Q. Was this place where you worked south of that?

A. No, I never had the compass; if I got the thing located right, it is west; I call it west.

Q. With reference to the monument, was it above the shaft, or below the shaft?

A. Where I done this work?

Q. Yes. A. It was below the shaft.

(Testimony of John McCune.)

Q. It was below the shaft? A. Yes.

Q. How many posts did you see; how many monuments?

A. Well, I will tell you, there was monuments all around the hill there, that is, more or less, and I didn't go around to the monuments.

Q. How many did you see that you understood were the Dave Lewis Hope monuments?

A. Well, I will tell you, I didn't even look at Dave Lewis' notice.

Q. How many did Dave Lewis tell you were his that you saw?

A. He says, "There is my location monument," and he says, "I run a thousand feet this way, and five hundred feet," he says, "north."

Q. That is a thousand feet south and 500 feet north?

A. Yes.

Q. Was it north or a little west of north?

A. Which?

Q. The direction that he run?

A. I didn't have a compass, I told you I never tried the compass on it, and I don't know; I supposed it was south.

Q. The reason I ask you, in your direct examination when you said the distance, I understood you to say north, or a little west of north, was that right?

A. Yes, I don't know how it varies; it might be a little west of north.

(Testimony of John McCune.)

Q. Did he point out to you any other stakes that he claimed as the Dave Lewis Hope stakes?

A. He went from this location monument south, and he says, "There is my monument up there"; there was three monuments.

Q. How far was that monument from where you did the work? A. Well, I guess it was—

Q. Right close there, wasn't it?

A. No, this was the end monument that we went to; it didn't take much of a monument there, just a few rocks piled up; and he said he wanted to measure that particularly, and we measured it; I didn't pay much attention to it, to tell the truth, but if I remember right it lapped over onto the company ground, I remember.

Q. That is, it lapped over a little bit onto the Mizpah?

A. Yes; if I remember right, if I didn't make a mistake in the tape; the wind is blowing up and down hill, and over rocks.

Q. This stake that he told you was the south center, was down there on the Mizpah ground, wasn't it?

A. No, I didn't see that stake, the corner stake; I said there was three monuments, according to our measurement it lapped over.

Q. Did he claim one of those stakes as his?

A. No, sir; he says, "There is my stake up there, that is my corner monument"; I didn't go up, there were three monuments there.

Q. Now, you spoke about some work having been done where you started in to work?

(Testimony of John McCune.)

A. Yes, a little work.

Q. Did it look like anything had been filled in there?

A. No.

Q. Nothing of that sort? A. No.

Q. Where was the nearest work to this; did you see any other work around close there?

A. No, not only this cut I speak of, from the location monument.

Q. You say that was about 300 feet from the location monument?

A. Well, yes, somewheres in that neighborhood.

Q. About 300 feet west?

A. Well, you might call it—it might be a little south.

Q. A little south of west?

A. Yes, I don't know, a man running over the hills there, he ain't supposed to know exactly.

Q. Was it so you could see it standing there at the location monument? A. Yes, it was there in sight.

Q. Who paid you for that work?

A. Dave Lewis.

Q. Did Dave Lewis pay you himself, did he hand you the money? A. Yes, that is what he done.

Q. You say you worked two shifts?

A. Three.

Q. Three shifts, was it?

A. Yes, I worked three and Enright worked four; I only charged old Dave Lewis for three shifts.

Q. When were you last on the ground at this point?

(Testimony of John McCune.)

A. I guess it was along probably the last of February.

Q. Wasn't it later than that that you say you were up there after the North Star started its shaft?

A. I don't remember; I know I went along the side hill one time after they had started the first shaft, and if I ain't mistaken, it was along the last of February some time.

Q. Supposing they did not start their shaft there until some time in June, as a matter of fact; supposing you are mistaken and they did not start their shaft there until some time early in June?

A. Well, I am convinced that it was along the latter part of February, or the first of March that I went over the ground.

Q. And as I understand you, when you went over the ground this time, they had already started their first shaft?

A. That is right.

Q. If they did not start their shaft until some time in June, you are badly mistaken as to the date, aren't you?

A. Well—

Q. I don't say you are mistaken; I say supposing, as a matter of fact, they did not start the shaft until some time in June, and you saw them after they started the shaft, you must be mistaken as to the time?

A. Well, certainly.

Q. I do not say you are mistaken, but it is just on that assumption. What shaft was this work in that you say you saw there when you started your cut?

(Testimony of John McCune.)

A. Oh, it was just, you might merely say it was scratched on top of the ground.

Q. How long was it and how deep was it?

A. There wasn't anything to it; it was just enough to show somebody had been there at work.

Q. Did you start in this same place?

A. Started a little bit below, I guess, Dave Lewis says, "Cut in here."

Q. When you got through with your work there, you had cut out whatever this was, hadn't you, that is, you drove into it, and had sort of swallowed it up, hadn't you?

A. We started right below, just below that, and run a cut in.

Q. Started below and ran a cut into the mountain, and when you got through this work was all taken up by your work, wasn't it? A. Yes.

Q. Do you know where the cut is now; that is, do you know what condition it is in now, whether it is covered with the dump of the North Star?

A. That is what I was telling you a while ago; the last time I was over the ground our work was covered up there with the company dump.

Q. When you were there last was there any shaft sunk where you had worked?

A. No, the shaft, that is what they call the company shaft there—

Q. I don't mean the company shaft, I mean the point where you did your work, when you were last there was

(Testimony of John McCune.)

a little shaft sunk, say 7 feet deep and 5 by 8 in the clear, right in the bottom of the work that you did?

A. When, after I went out there the second time?

Q. Yes? A. No, our work was covered up.

Q. Your work was all covered up then? A. Yes.

Q. Now, tell me again, as near as you can, when it was that you went back there and saw this work covered up, or that is, went back and found that the work was covered up?

A. Well, by George, I am right positive I was out there, it might have been along in March sometime, I should judge.

Q. Along in March some time?

A. Yes, I would not be positive about it, I should judge it was along in March some time.

Q. When did you first talk to persons, other than Dave Lewis about this work? A. When?

Q. Yes, when did you first tell people about having done this work?

A. I don't know as I talked to anybody about doing the work.

Q. Did Mr. Golden or Mr. Ramsey speak to you about it? A. No.

Q. Didn't Mr. Golden ever speak to you about it?

A. Not that I remember of; I don't believe Mr. Golden or Mr. Ramsey either, ever spoke to me about the work; they know I done the work all right, but I don't remember that either one of them ever spoke to me about doing this work; not that I remember of.

(Testimony of John McCune.)

Q. Don't you know that Mr. Golden came to you and talked to you about it, and went through the whole thing and asked you all about it, and when you did it, and how much there was? A. I say no.

Q. You say no? A. Yes.

Q. Well now, are you sure of that?

A. Yes, he never made any remark of the kind to me that I remember of.

Q. Don't you know that Mr. Golden did talk with you, and that you made an affidavit, and signed and swore to it, and delivered it to him?

Mr. METSON.—I object on the ground it is incompetent and immaterial, and the time, place and circumstances are not stated.

The COURT.—That would go to show whether he had a talk or not.

Mr. GOODWIN.—It is not for the purpose of proving the contents of the affidavit.

A. I swore to an affidavit all right, but it wasn't to Frank Golden, it was for Dave Lewis.

Q. If Mr. Golden says that he has an affidavit of yours—

The COURT.—He might have an affidavit of his made for somebody else. We only want to get at the facts.

Mr. GOODWIN.—If your Honor please, right now I ask counsel if they have such an affidavit as is referred

(Testimony of John McCune.)

to on Mr. Golden's letter to produce it, and give it to me as a basis of cross-examination of this witness.

(Counsel for defendant state they have no such affidavit.)

Mr. METSON.—I never heard of such an affidavit until I saw Mr. Golden's letter.

Q. Now, since you have heard the talk here between counsel and his Honor and myself with reference to Mr. Golden, did it refresh your memory at all as to having made an affidavit, and delivering it to Mr. Golden?

A. No.

Q. You heard a good deal about the Dave Lewis Hope claim there about that time, didn't you?

A. Oh, yes, but I didn't pay much attention to it; the ground was located, and I was looking after something that wasn't located.

Q. Where was this stake situated that Dave Lewis took you to as his discovery stake, where was that situated with reference to this cut that you run?

A. Well, it might be a little west of north, or it might be almost due north for all I know, for I didn't have the compass on it.

Q. But you would say if not exactly north, if anything, it was a little west of north?

A. Yes, if anything, it was a little west of north.

Q. And about how far off?

A. Well, about 300 feet, somewheres in that neighborhood, I don't just remember.

(Testimony of John McCune.)

The COURT.—That is your best recollection; you didn't measure it, and didn't have a compass?

A. No.

Q. Did you see a notice there?

A. Well, there was a notice there, but I didn't read it.

Q. What kind of a stake was it?

A. Was no stake at all, a monument built out of stone.

Q. A monument built out of stone, and how high?

A. Oh, it was probably, maybe three and a half feet; somewheres along there.

Q. And there was no stake in the top?

A. No, the location monument wasn't.

Q. To refresh your memory: Wasn't there a stake that looked like a 4 by 4 that had been split in two?

A. It wasn't there the time I was there at the monument.

Q. It wasn't there the time you were there?

A. No.

Q. Are you sure of that?

A. Well, yes; it was down on the corner of what he called the corner monument, where them three monuments was at a distance, there was a stake in one of them.

Q. There was a stake in one of them? A. Yes.

Q. And that, as I understand you, was down in the Mizpah ground? A. It cornered.

Q. It cornered on the Mizpah? A. Yes.

(Testimony of John McCune.)

Q. So, as I gather it from you, you made the cut a little south of where the North Star first started their shaft; south or west down hill, below? A. Yes.

Q. That is the fact? A. Yes.

Q. About 300 feet north or a little northwest from there was a monument which Dave Lewis told you was his discovery monument, and in which there was a notice that you didn't read?

A. I didn't look for the notice.

Q. Then south from there, a distance of how far, about a thousand feet? A. Which?

Q. Down to the Mizpah, to that corner that was on the Mizpah? A. Well, yes, about a thousand feet.

Q. You were away about a thousand feet down towards the Mizpah and on the Mizpah saw another stake that he pointed out to you?

A. I wasn't up to those monuments.

Q. But as I understand from you, he pointed out to you a stake on the Mizpah ground, a little ways on the Mizpah ground, that he said was one of his stakes?

A. Yes.

Q. That is a fact, is it? A. Yes.

Q. Was that stake in line with the discovery stake and your cut running on down a thousand feet?

A. In line; how do you mean?

Q. Here is what I mean: Supposing here was the discovery stake?

A. It may look all right on paper, but his end monuments came right up to the Mizpah, what we supposed

(Testimony of John McCune.)

was the Mizpah, and three monuments there, and I didn't go up to the monument; there was a stake in one of them, some kind of a stake; I don't know whether it was a post or square stake; or what it was; three monuments built out of rock, and there was a post of some kind in one of them.

Q. And he told you or claimed to you, that one of those stakes was his, didn't he?

A. Yes, one of them.

Q. That is down on the Mizpah?

A. Yes, he claimed the one that the post was in.

Q. Now, starting up at the monument that he told you was the discovery monument, and then going down hill till you came to the point where you made your cut, would this stake that was down near the Mizpah be practically in a straight line with those two points?

A. You mean the corner?

Q. That stake that he pointed out to you, or the monument that he pointed out to you on the Mizpah?

A. Well, I guess it would be the side line all right enough.

Q. Might it not be the center line?

A. It was the southeast corner, is where these three monuments was.

Q. Southeast corner, and that was down near the Mizpah? A. Yes.

Q. Mr. McCune, will you come and look at this photograph a moment? A. Well, my eyesight is failing.

(Testimony of John McCune.)

Redirect Examination.

Q. Mr. McCune, about how wide was this cut that you made for Dave Lewis?

A. Well, it was about four feet wide.

Q. How long was it in the mountain?

A. I should judge it went in for probably 15 to 18 feet.

Q. How high a face did it have on the cut?

A. It was probably 7 or 8 feet in the face.

Q. You have spoken about these three monuments; were these three monuments that Lewis pointed out to you on a knoll or in a gulch?

A. In a draw.

Q. Now, what did Lewis say about these three monuments?

Mr. GOODWIN.—Of course, this is under our objection all the time, that the declarations of Lewis unless made in the presence of his co-locator or some of the plaintiffs in the action will not bind us.

The COURT.—I am allowing it in, subject to the objections, to be considered by the Court. Plaintiffs except.

Q. What did Lewis say about these three stakes?

A. He says "There is my corner monument up there," that is all.

Q. (The COURT.) As I understand the witness, there were three stakes there, and one of them was pointed out as his monument; not that all three were, but one of them.

A. That is right.

(Testimony of John Salsberry.)

Q. I just want to know if he designated any particular one of these three? A. No.

JOHN SALSBERRY, a witness called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. What is your name? A. John Salsberry.

Q. Where do you reside? A. Tonopah.

Q. How long have you resided in Tonopah?

A. Since May 11, 1901.

Q. Attracting your attention to certain work that has been testified to about Mount Oddie, in the face of Mount Oddie, will you state to the Court what you know about that work and about this location that has been testified to, called the Dave Lewis Hope; when you became familiar with the same, if you did, and just tell it in your own way, and as near as you can, eliminating all conversation with other people and your conclusions; just state what you saw, and when you saw it.

A. To start off with the subject, I will have to express how I happened to go over there first. Mr. Golden came to me on the night of October 8th, 1901, and says, "We located the North Star Tunnel to-day, and he says, "We would like to have you go over the ground, and see what you think of it," I says "All right," and on the following day, October 9th, 1901, I went over the ground; went around where they put up two big notices, and proceeded to go over the line of

(Testimony of John Salsberry.)

the tunnel. And I went over the line of the tunnel, and on the way going up, of course I commenced on the north side and went up on the hog back, that northwest hog back that lay off of Mount Oddie, and on top of this hog back I noticed a monument there, this Dave Lewis Hope, together with a stake in it, perhaps there was a mound around it of rock two feet high or so, and in this monument was a notice, a tin can rather, with the notice in it, and this notice was something that I could hardly make out, only the date, it was in such a scrawling manner, it had evidently been located before, this ground had, and the figure had been erased with the finger, and the date changed to August 26th, 1901. Well, I don't know who changed it, but evidently it had been changed, and I looked around, and didn't see any more monuments; went clear over the ground, practically down to the Mizpah, and found no more monuments, except belonging to the Lucky Jim, the Corona and G. & H. Tunnel, and these monuments going through, belonging to the North Star; that is all I noticed that day.

Q. (Mr. GOODWIN.) What day was that?

A. October 9th, 1901. And then I was over there again; I was over with Mr. Ramsey; that was in the latter part of November, we went around to the tunnel, went over the top of the mountain again, and I showed him this notice, and we took it out and read it, and could not make heads or tails to it, only the date

(Testimony of John Salsberry.)

and the name; it was Lewis and Carr or Carr and Lewis; and we went down over the ground, and where the monument is supposed to be of the Dave Lewis Hope, which is several hundred feet from the original notice of discovery monument on the hill and came right down to the slope of the mountain on the southwest side, and we sat down there for some time; our reason for sitting down there was this; there was a little manganese stain there, and we could get a full view of the town, a nice raising point, and we sat there for some time, where this work was supposed to be done, this cut was supposed to be done; I don't know when, and that afternoon we went down the hill. On several occasions—it may sound funny, but I have sat on that identical spot where the monuments and work is supposed to be done in 1901, have sat there many a time, and there was no work at all with the exception of one time when Harry Ramsey and I—we have been there on two occasions and Harry Ramsey had a pick, and he was picking away, and that was the only work that was done there, and that didn't amount to anything. Then on another occasion I was up there with Mr. Curtis, and there was no work done there at all, nothing there whatever.

Q. When was the cut made, if you know?

A. When was the cut made?

Q. Yes, sir? A. Now, I left January 14th, 1902, and went down to the city during that epidemic, and I stayed there, must have been along in April, and

(Testimony of John Salsberry.)

when I came back the work was done; I didn't see the work done, that is the Dave Lewis Hope cut work, I didn't see that done, but I knew it was done sometime between those two dates.

Q. Where was this monument that you say had the Dave Lewis Hope notice of location in it?

A. That was near the apex of Mount Oddie.

Q. How near the apex of Mount Oddie?

A. Oh, perhaps a little over 200 feet; I knew the exact measurements, I heard it, but at that time I thought it was a little over 200 feet, but now I know it to be 240 feet.

Q. What direction was the monument from the top of Mount Oddie?

A. Well, it would be west; it would be about in a westerly direction.

Q. The monument would be west from the top of the mountain, from the apex of Mount Oddie?

A. Yes, sir.

Q. How much higher is the apex, or top of Mount Oddie than the place where this monument that you speak of rested?

A. Oh, perhaps 40 or 50 feet; it is pretty close to the apex; that is, the height of it wasn't much higher, Mount Oddie is not, than where this monument was.

Q. With reference to this monument that you speak of that had the notice in, state its position, whether on a crest, or hog's back, draw, canyon, or something of that kind?

(Testimony of John Salsberry.)

A. The discovery monument of the Dave Lewis Hope?

Q. Yes?

A. That was on the north, just a little over the north side of the hog back, coming down towards the west.

Q. What hog back?

A. The westerly hog back, the one which cuts the tunneling of these claims.

Q. Then from the top of Mount Oddie there is a hog back that runs westerly down towards town, is that true?

A. No, it runs a little north of the town, if it keeps its direction; you could see it from town very plainly; yes, you could term it that way.

Q. Is not that the only hog's back that runs from the top of the mountain?

A. No, there are several others; there is one large one running over to the G. & H. tunnel, then there is others to the other side.

Q. Give the points of the compass?

A. There is one large hog back, that is the main back, over the mountain, which runs in a southerly direction, and then there is another one, a very prominent one, running due north towards Ray, and that country in there; and there is another one, not quite so prominent, coming down in a southerly direction this side of the G. & H. tunnel; and then this westerly one, that I

(Testimony of John Salsberry.)

am referring to where the Dave Lewis Hope monument is.

Q. They apex or come together at the apex of the mountain do they? A. Yes, sir.

Q. And that is about fifty feet higher where this monument was, and that monument was 240 feet west-erly from the top? A. Yes, sir.

Q. Now, state whether or not you made search for other monuments of the Dave Lewis Hope at that time, October 9th?

A. October 9th I searched all over that ground for other monuments; and I went to all those monuments, and they happened to be fresh, most of the tunnel monuments were up, and they were marked, and you could easily tell when you reached a cross and monu-ment who it belonged to, because everything was newly located at that time; and I found no monument what-ever that belonged to the Dave Lewis Hope Claim ex-cept the discovery monument on top of this hog back.

Cross-examination.

Q. How did you happen to be up there?

A. On October 9th?

Q. Yes?

A. I went over that ground by request of Mr. Golden, parties looking for monuments—locations.

Q. Who was with you?

A. Nobody with me that day.

Q. Nobody was with you? A. Not that day.

(Testimony of John Salsberry.)

Q. What time were you up there?

A. I started early in the morning.

Q. Up there pretty near all day?

A. No, sir; I hardly ever eat dinner; get up in the morning and I may be gone all day; but I get back to supper, but my best recollection is I came down about one or two o'clock.

Q. And you were around over that ground there all day, that is, all the time you were up there?

A. No, sir, I wasn't around that ground all day; I came down perhaps at one or two o'clock.

Q. All the time you were up there on the mountain you were traveling around on the hog's back and side looking for stakes?

A. Yes, sir; that was my sole object in being up there.

Q. Did you make any locations that day?

A. No, sir.

Q. Who did you see and who was with you?

A. Nobody was with me.

Q. Who did you see?

A. I didn't see anybody on the mountain.

Q. Didn't you see Mr. Ish there, and didn't you and Mr. Ish go over that country?

A. No, sir, I didn't know Mr. Ish at the time.

Q. Supposing Mr. Ish had been up there the 9th of October, and doing the same thing you were, searching for stakes all over the side of that hill, do you think you would have **seen him**?

(Testimony of John Salsberry.)

A. If he had been there in the morning, yes, sir, I would have seen him.

Q. If he had been there up till one or two o'clock would you have seen him?

A. Not after I went over on the other side, no, sir.

Q. Were you up there the next day?

A. No, sir, I was not.

Q. When were you next up there?

A. Well, I was up there in the latter part of November.

Q. You didn't see Mr. Ish there as you went up or came down on October 9th? A. No, sir.

Q. You are sure it was the 9th?

A. I am most positive, sir.

Q. You are pretty good on dates?

A. Well, on those dates, yes, when I recollect making some important location.

Q. Were you making a location that day?

A. I didn't locate any of that ground.

Q. I say were you making a location that day, the 9th day of October, 1901?

A. Well, I didn't make any important location; when you ask me that question I will explain to the Court. I am in the habit of locating sometimes ten or twelve claims a day; yes, I have done it many times; once I stretched the record, and located eighteen, so it is hard for me to remember unless it is some very important one.

Q. Well, did you or did you not locate any that day?

(Testimony of John Salsberry.)

A. Well, I could not say as I did or did not; I would not be positive, because it is a long time between the time I went up an went down.

Q. Tell us what you were up there for?

A. I was up there for the sole reason to go up there and look over this ground by request of Mr. Golden, to see if it was clear, to see about the title.

Q. He told you that he had located a tunnel site?

A. Yes.

Q. Had not the line of that tunnel been laid out?

A. Yes, sir.

Q. Wasn't the line of that tunnel the principal thing that you devoted your attention to?

A. We devoted our attention to 750 feet on the other side, and I came down and reported to Mr. Golden.

Q. Never mind what you reported to Mr. Golden. That tunnel line was marked out?

A. Yes, sir, every three hundred feet there was a marking.

Q. And you followed along that tunnel line, didn't you?

A. Why, kept with it; yes, sir, and I came back also over the hill, on the west, on the tunnel, right on the northwesterly side, and also on the southerly side, towards the town; was on the southwesterly and northwesterly side of Oddie Mountain.

Q. Didn't you say that following up that tunnel line you came on a stake?

A. I said on the hog's back; walking up the hog's

(Testimony of John Salsberry.)

back I saw a number of monuments on top of the hog's back; I saw two there, one was a Dave Lewis Hope, and the other was a monument put up there I guess by the United States, of some survey point.

Q. It was not a location?

A. No, sir, and the Dave Lewis was between the tunnel line and this apex of the mountain.

Q. When had this tunnel location been made; that is, when was the location made, the day before?

A. On October 8th.

Q. On October 8th? A. Yes, sir.

Q. Were you associated in that location?

A. No, sir; my name was not on the location notice.

Q. But was it understood that you were interested, and would be a party in the corporation, and in the development? A. Yes, sir.

Q. That was the understanding? A. Yes, sir.

Q. Who were the others?

A. Mr. Ramsey, Mr. Golden, Mr. Ray and I believe a man named Catton, I never met him.

Q. And yourself? A. Yes, sir.

Q. Anyone else? A. That is all.

Q. Was that what might be termed a jumping location? A. No, sir; Mr. Oddie abandoned it.

Q. Had he actually abandoned it, or had not done his work?

A. Well, he didn't do his work, said he didn't want it any more.

(Testimony of John Salsberry.)

Q. They had made a location there, and the time had expired, and you people put this location on?

A. Yes, but our people saw Mr. Oddie before they put it on.

Q. It was understood, was it? A. Yes.

Q. Are you one of the directors and stockholders in the defendant corporation? A. Yes, sir.

Q. How long have you been such, since its incorporation? Yes, sir.

Q. To what extent are you interested?

A. Oh, between forty and fifty thousand shares.

Q. When did you people first conceive the idea of acquiring this particular tract that is in controversy here?

A. What tract do you mean, the Ivanpah?

Q. What we say is the Dave Lewis Hope and what you say is the Ivanpah?

A. Oh, no; they are entirely two different claims. That plat there would throw anybody off; this notice of the Dave Lewis Hope is away on the mountain. I want to explain to you, it is a different ground altogether; the Ivanpah and Dave Lewis Hope are not one and the same at all.

Q. If the Dave Lewis Hope is a claim 500 feet north 8 degrees west from a point 300 feet north of the North Star present shaft; and a thousand feet south 8 degrees west from that same point, then what would you say as to its being practically the same ground as the other?

A. Let me get that just right. 300 feet 8 degrees north?

(Testimony of John Salsberry.)

Q. North 8 degrees west. Take a point, say 300 feet north, or a little west of north of the present shaft?

A. May I have one of these maps?

(Question withdrawn.)

Q. You know where the North Star shaft is?

A. Yes, sir.

Q. Now take a point, say 8 degrees west of north 300 feet distant from that; have you that fixed in your mind?

A. Yes.

Q. Now take a tract of ground running 500 feet north 8 degrees west from that point, with that fixed, and a thousand feet south 8 degrees east from that point; that is 300 feet on each side; in other words, it is almost north and south; there is a variation of 8 degrees; 8 degrees west of north and 8 degrees east of south, which is pretty near north and south.

A. Why, you might possibly run over a very small corner; southeast corner, you might run over perhaps a quarter of an acre of the Ivanpah.

Q. Am I mistaken in assuming that your shaft is on the Ivanpah claim?

Mr. METSON.—I object to that assumption, and ask if the assumption is correct; also object on the ground it is incompetent and immaterial.

The COURT.—Well, if he is mistaken about it we will see.

A. Well, my assumption is that you are taking the discovery location notice and monument for your point, ain't

(Testimony of John Salsberry.)

you, or have you another discovery point of another location; if you do, explain, and I will know how to go on.

Q. Get out of your mind, if you can, that stake that you discovered up there on the summit of Mount Oddie; now, forget that, will you?

A. I cannot forget that; that is the only one I ever saw.

Q. Just try and forget it?

The COURT.—Leave it out of your mind, you need not forget it.

Q. Not considering that, but supposing that that stake, or that monument was down at a point 300 feet north of the North Star shaft on a course 8 degrees west of north; have you got that point fixed in your mind?

A. Yes; I can see that part way up the hill; just imagine it is there.

Q. Now take a location that would run on that same course north 8 degrees west, and south 8 degrees east, 1500 feet long, 300 feet on each side.

A. Now, this is a supposition.

Mr. METSON.—I object to that remark; it lays our whole shaft with this witness.

The COURT.—Well, take an exception.

Q. Would such a location made from such a point, such a distance and course, cover practically the Ivanpah ground?

A. Well, the supposition is that this monument is 360

(Testimony of John Salsberry.)

feet, 8 degrees west of north, and runs 1500 feet in a northerly direction?

Q. Five hundred feet from that and a thousand feet down to the Mizpah ground; would not that cover practically the Ivanpah ground, the location?

A. Three hundred feet north of the shaft?

Q. Yes?

A. Well, I was taught that bearings and distances give way to fixed points, and I don't know anything about these bearings and distances you are talking about; the fixed point is on top of Oddie Mountain; that is the only one I know anything about; that discovery notice of the Dave Lewis Hope; there is no supposition at all about it; we are not supposing, we are down to facts.

Mr. METSON.—You will have to answer the gentleman's question the best you can.

Q. I want to treat you perfectly fair, and I think you understand our theory of the case, and the testimony that has gone in. Assuming that there was a stake where they place it, which is 300 feet northwest from your shaft; now with that as a starting point, extending 500 feet in the same direction, and a thousand feet southerly, 300 feet on each side of that line, would it practically cover the Ivanpah claim? A. No, sir, it would not.

Q. It would not?

A. No, sir, I did not understand you before.

Q. It would not; well, why not?

A. Why not? Because it is way to this end; it is way

(Testimony of John Salsberry.)

to the southeasterly end, it would take in; it would take in the —well, the southern portion of it. To where you are talking about, it would take the southern portion of the Ivanpah claim.

Q. In what half of the Ivanpah claim is your shaft; is it in the northern half or the southern half?

A. It is in the southern half.

Q. And how far is it, approximately, from the center?

A. About, oh, 450 or 500 feet, I guess, maybe 600.

Q. From the center?

A. To the center of the side lines, I mean.

Q. From the center of the lode line?

A. Well, it is 600 feet, I should think.

Q. Then how far is your shaft from the south end line of the Ivanpah? A. How is that?

Q. How far is the North Star shaft from the south end of the Ivanpah?

Mr. METSON.—I object; we are out of court on that answer.

Mr. GOODWIN.—Of course you are; if the witness understood the answer he has the shaft 600 feet from the lode line.

A. I did not quite grasp that.

Q. Do you know where the south end line of the Ivanpah is? A. Yes, sir.

Q. Do you know what I would call the center line of the claim?

A. Your question before was—I don't want to get

(Testimony of John Salsberry.)

puzzled on anything. I understood you to say, how far was this shaft from the cut that Mr. Ish put in that vein in the center of the claim?

Q. No, that is not what I mean?

A. What is your question?

Q. Let me draw a little diagram here. Taking that the long way of the claim, 1500 feet; when you said center, you meant a line across there; now, is your shaft in the southern or northerly half of the Ivanpah?

A. In the southern half.

Q. Being in the southern half, how far is it south of this center line?

A. Well, perhaps—well, between five and six hundred feet.

Q. You think as far as that?

A. Yes, sir; I do; something like that.

Q. Then if it is five or six hundred feet, starting at a point 300 feet north of there would make the Dave Lewis Hope just 300 feet under one condition, and 200 feet under the other condition, shorter than the Ivanpah, wouldn't it?

A. Two hundred feet, how is that?

Q. If you are south 600 feet; if your shaft is south 600 feet, then if you would take a point for the Dave Lewis Hope 300 feet north of that, that would carry you back to within 300 feet of your center line, wouldn't it?

A. Yes; but the Dave Lewis Hope would be over here.

Q. That is according to your recollection of the stake that was put on Oddie Mountain?

(Testimony of John Salsberry.)

A. Yes, sir; that is the only way I have got to go by; that is the only one I ever saw.

Q. That is the only one you found up there, but I am taking those that are testified to down here. Taking that as the starting point, and running 500 feet, would carry you up practically to within two or three hundred feet of the north end line of the Ivanpah?

A. You misconstrue northerly or westerly for due, it is not; you take northerly and put it due north, and take westerly, and explain it due west, and it is not.

Mr. METSON.—I think you assume in your question that this witness had testified to a stake 300 feet north of where the Dave Lewis cut had been made; I do not think that he said that.

Q. I did not intend any such assumption, and I did not so assume it?

A. No, sir; I did not, but you assumed that.

Q. I did not intend to assume that you had testified that you found a stake?

A. You see about these stakes down here, I know nothing whatever; I seen them putting them up, but didn't take any trouble to go and investigate, because I supposed, or always counted on the title being absolutely perfect; but this monument up here—here is the slope of the mountain, I believe I could draw that; I am no draughtsman, but I believe I could put it thoroughly in your mind by drawing it.

Q. I think I have in my mind what you mean, there is

(Testimony of John Salsberry.)

no question about that; I know the locality that you say you found the stake in all right; but if there should have been a location monument down at the point we claim there was one, and the location run 500 feet north, or northerly, from there, a little west, and a thousand feet southerly from there, a little east, wouldn't it have practically covered the Ivanpah location?

A. No, sir, it would not.

Q. It would have covered the main portion of it, wouldn't it?

A. No, sir, it would not.

Q. Does your location come down to the Mizpah?

A. The Ivanpah?

Q. Yes?

A. Yes, sir.

Q. Under those conditions, would not our location also have come down to the Ivanpah, and trespassed a little?

A. You don't seem to grasp the idea; I would like to make one mark on the blackboard, and you would grasp it in a moment.

Q. I grasp the idea you intend to convey; in other words, you are not trying to answer my hypothetical questions?

A. I am not trying to evade your questions; to give you directions; for instance, one claim is running that way, and your other claim is running that way; do you think this would come over the corner, and take in your whole claim 500 or a thousand feet?

Q. You are answering my question all the time from the assumption there is no other location than the one you have said, no other stake, excepting the one you have

(Testimony of John Salsberry.)

said you found; you are answering my question all the time with that fact fixed in your mind; now, assuming that that is not so, assuming that that location monument was down 300 feet north of the cut, 300 feet north of the North Star shaft, and then running that location from that point north 500 feet, and south a thousand feet, wouldn't it practically cover the Ivanpah?

A. No, sir; it would not, assuming as you say, it would not, no, sir.

Q. Is your shaft on the west or on the east of the center line of the Ivanpah claim? A. How is that?

Q. Is it on the west or east of the center line of the Ivanpah claim; and by the center line I mean the lode line, running from your north end to your south end?

A. Why, it is on the east; it is very near the center.

Q. It is very near the center?

A. Yes, perhaps it is 40 or 50 feet of it.

Q. When did your company first conceive the idea of acquiring the Ivanpah?

A. I don't just recollect the date, because there were other parties more deeply interested than I was, had large interests.

Q. And they made the negotiations, and you simply stood in? A. That is the idea.

Q. Well, do you know whether the Dave Lewis Hope was ever acquired by your company, or whatever right, title or interest Lewis had in it, was acquired by your company? A. No, sir.

(Testimony of John Salsberry.)

Mr. METSON.—I object as not in cross-examination, and immaterial and incompetent.

The COURT.—No, I suppose if the North Star had acquired all the rights, they would not object to your proving it.

Recess until 1:30 P. M.

After Recess.

Cross-examination of Mr. JOHN SALSBERY (Resumed).

Q. Did you see that stake up there after the 9th of October, 1901? A. What stake do you refer to?

Q. The stake that you testified to?

A. The discovery monument of the Dave Lewis Hope mine or claim?

Q. Whatever you see fit to term it; you testified to finding a stake in a monument and a notice up on the summit of Mount Oddie?

A. Yes, sir; I seen it about the 29th of November.

Q. Who was with you at that time?

A. Harry Ramsey.

Q. When did you see it again?

A. Well, I could not recall the date; I was up there with Mr. Harris one time; we went to the apex of the mountain, and I saw it that time.

Q. About when was that?

A. Well, I could not tell you really the year.

(Testimony of John Salsberry.)

Q. Was that before or after you went to San Francisco?

A. That was after I went to San Francisco, I went back.

Q. Was it in 1902?

A. I think it was in 1902.

Q. What time, as near as you can tell?

A. I could not tell you, could not even tell you the month.

Q. Was it in the fall, or in the spring, or summer?

A. I think it was in the spring.

Q. Was it before or after the North Star had started its shaft on the Ivanpah? A. I believe it was after.

Q. How long after? A. Well, I could not say.

Q. You are uncertain?

A. I am uncertain about that; but I tell you I have seen it on different occasions, before and after too, I cannot recollect them.

Q. Do you think you saw it in 1902 any time, before the North Star started to work their shaft?

A. Yes, I do recall an instance now.

Q. When was it?

A. That was the time that Mr. Vaughn was around there; Mr. Vaughn was doing some work for Mr. Porter, and what the nature of the work was I don't know; it was digging and widening out that cut, or something; and I believe that was the time these monuments were supposed to be put up, but I didn't notice them at that time,

(Testimony of John Salsberry.)

and that must have been, perhaps in May, I would not swear to that positively.

Q. Were you up to this monument at that time?

A. Yes, came over the hill, and came down to where Mr. Vaughn was, and stayed with him some time.

Q. Describe the monument to me?

A. On the hill?

Q. Yes, as you saw it then?

A. Well, it was built out of rock, and was about two feet high, I should judge, maybe a little higher, and perhaps two and a half or three feet around the base, and in this rock pile was a post, I presume that was 4 by 4 or 3 by 4, or something of that kind, and there was a notice there; I also noticed to see if there was any more dates changed, or any more finger marks on them, I always watch those things, and the date was there just the same as last time.

Q. Anything else that you noticed?

A. It seems to me there was another notice on there partly torn off; now, I understood what that was, you know, but I never read it.

Q. You could not say what it was?

A. I only know around town what it was, I heard what it was.

Q. Whereabouts was the cut that you have heard testified to here, with reference to the North Star shaft?

A. Well, it was very close to the North Star shaft, it was a little northwest.

Q. A little northwest?

(Testimony of John Salsberry.)

A. Or west, I would not be positive as to the direction; it is between a north and west direction, somewhere there, northwest.

Q. With reference to being up or down hill, is it up or down hill from the North Star shaft?

A. Pretty much on a level with the North Star shaft; it is a little up of the North Star shaft.

Q. When did you see that cut last?

A. I have seen it so many times I could not tell; I know where it is, it is covered up partly; we have a magazine there.

Q. Have you seen it lately?

A. Not very lately, no.

Q. Have you seen it since this suit was commenced?

A. No, sir, I have not been up on the hill since this suit was begun.

Q. Have you seen it since May, 1902?

A. When was this suit begun; I thought you had reference to the time we were subpoenaed.

Q. I think in December, 1903, the complaint was filed, and the suit was commenced; and that is what I mean, the date of the commencement of the suit?

A. I have been up there several times since then, and down the shaft and all around.

Q. Have you seen the cut since then?

A. Well, there has been three or four cuts excavated there, quite a little work done lately by our managers, and dumps filled in there and leveled off and excavated some for a powder magazine; I could not swear positively

(Testimony of John Salsberry.)

that I did see it in the last three or four months; there has been a general displacement there; there has been a large hole sunk there, and a whole lot of dirt come out, and we had to have room for it.

Q. The cut you refer to is not covered up by the dump of the North Star?

A. It is partly covered up, yes, sir.

Redirect Examination.

Q. After the North Star moved their shaft up there, was that cut changed about and enlarged or excavated differently, so as to make a powder magazine, or anything of that kind?

A. I believe it was; they stored powder in it; I believe was sunk some, and kept the powder in there.

Q. (Mr. GOODWIN.) Was there a little shaft in there?

A. No, sir; I never noticed any shaft there.

Q. That was not the cut, then, in which there was a shaft?

A. No, sir; only this excavating that cut into the hill.

Q. And there was no shaft from the level or bottom of that? A. No, sir.

Q. Did you ever see a cut there run into the hill with a shaft sunk from the bottom seven or eight feet, a shaft 5 by 8 in the clear, in the neighborhood of 7 or 8 feet deep?

A. No; I cannot recall it if there was.

(Testimony of John Salsberry.)

Q. You cannot recall it?

A. No, sir; I told you there was quite a bit of work done there; that was excavating for all kinds of buildings, and a little of everything around there, storing oil and powder, and putting in pipe.

(By Mr. METSON.)

You say upon the hill, above where this cut was excavated, that Mr. McCune talked about, that you saw another notice partially torn off; describe to the court what that notice looked like?

A. Well, it was a sheet of paper nailed up there; of course, I will have to presume this, it was an attachment, I suppose.

The COURT.—I suggest that what the witness heard or what he supposed it was, is not relevant; we want to get at whether he knows what it was, and if so, what it was.

Q. I want to know if he read part of it, and if so, if he can tell what it was; and how it was fastened on there.

A. I didn't read it; in fact, we always considered that a joke; yes, we laughed about it a great deal, how Davis got his money out of it.

Q. Just tell what you saw; describe the paper?

A. Well, it was nailed on there; I didn't pay much attention to that part of it.

Q. Describe it as near as you can?

A. I think it was a square sheet of foolscap paper,

(Testimony of John Salsberry.)

perhaps, and it was partly torn off, just a few remnants left there; I could not swear to the fact.

Q. Fastened how, or onto what?

A. I think it was nailed onto this 4 by 4.

Q. What 4 by 4?

A. Dave Lewis Hope monument, discovery monument, was up on top of the apex, or near the apex, of Oddie Mountain.

Q. Counsel has questioned you this morning on an assumption; now, Mr. Salsberry, you say that you went over the line of the tunnel, what tunnel, the North Star tunnel? A. North Star tunnel.

Q. And did you testify that the North Star tunnel was west or east of the monument that you say had the Dave Lewis Hope notice in?

A. No, sir; I didn't testify to it; it lies west, the tunnel lies west of the Dave Lewis Hope monument, discovery monument.

Q. About how far west?

A. I think it is 300 feet, about.

Q. Do you know the line of the tunnel, do you know the course of it? A. Well, very nearly.

Q. What is the course?

A. Why, it is a little, I think it is a little east of north, and south of west, I believe.

Q. Now, Mr. Salsberry, assuming that this monument that you found the notice of location of the Dave Lewis Hope claim in to be the location monument, and

(Testimony of John Salsberry.)

assuming the course mentioned in the notice, will or will not the location that you would lay out in your mind from that notice and from that monument, conflict with the Ivanpah, as you knew it?

A. Well, I think it would take a little of the southeast corner, a very little of it.

Q. The southeast corner of the Ivanpah?

A. Yes, sir.

Q. Assuming that to be the location point of the Dave Lewis Hope, I mean this monument where this notice of location of the Dave Lewis Hope claim was seen by you; and laying out the location according to that notice on the ground, would or would not the cut that was testified to by Mr. McCune be within or without the side lines of that location as laid out?

A. Would it be outside of the lines of the Dave Lewis Hope, do you mean, the Dave Lewis Hope claim; would this cut that McCune excavated be in or out of the Dave Lewis Hope?

Q. I mean the Dave Lewis Hope?

A. It would be outside.

Q. Taking the same assumption, that is this same location where you found this notice of location of the Dave Lewis Hope, and lay that out from that monument, as the location monument of the Dave Lewis Hope claim, would or would not the work done by Mr. Ray or Mr. Ish on the Ivanpah, be within or without

(Testimony of John Salsberry.)

the side lines, or all the lines of the Dave Lewis Hope, as laid out in that manner?

A. Would the Ish work be outside of the Dave Lewis Hope claim; that is the way I understand it?

Q. Yes?

A. Yes, sir, it would, and quite a few feet; that would be allowing 300 feet on either side of the Dave Lewis monument.

Q. That is what I mean?

A. Well, it is fully 450 feet from the cut to their monument.

Q. That is the cut made by Mr. Ray?

A. Yes, sir.

Recross-examination.

Q. Why did you consider that fragment that you found up there on the post a joke?

A. Well, I can explain it to you if you wish. Davis and Lothrop, they didn't know anything about the locations up there, or anything of the kind, and I presume they heard there was a deal on there, and oftentimes in a stock camp you know—

Q. Heard there was a deal on hand?

A. Yes; and oftentimes in a stock camp, where there is a great deal of stock sold, lots of little things goes on, and we hear and don't mention, and don't say anything about it; they got in and put that attachment on, and as we term it, a would-be sucker came along, and paid the Carr bill to Davis and Lothrop, and it

(Testimony of John Salsberry.)

was quite a joke the way he got in, he was very smooth about getting in.

Q. You thought it was a smooth job, did you?

A. I think somebody got taken in; it was passed around the town.

Q. You ain't sure yet who it was, are you?

A. No, I ain't sure, I am pretty positive, though, in my own mind.

Mr. URI B. CURTIS, a witness called and sworn on behalf of defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. Where do you reside? A. Tonopah.

Q. How long have you resided in Tonopah?

A. I went there the 30th of September, 1901.

Q. What has been your business? A. Mining.

Q. In what respects, what character?

A. Buying and developing properties, general mining.

Q. Do you prospect, and polish the head of a drill?

A. No, I never have.

Q. You are not an expert in that line?

A. No.

Q. Are you interested in the water?

A. Yes.

Q. In the water supply for the town of Tonopah?

A. Yes.

(Testimony of Uri B. Curtis.)

Q. Are you interested in any other place in that vicinity? A. In the way of mines around there?

Q. Yes? A. Yes.

Q. Where?

A. Interested in the Fraction, which is the property I first developed there; the Belmont Tonopah, and several others, in a small way.

Q. Outside of Tonopah have you any interest?

A. Yes, Goldfield, Ray, Lone Mountain.

Q. Since you went there in 1901, you have been more or less interested in different mining properties there, and in the development of the town of Tonopah, and Goldfield? A. Yes.

Q. Are you familiar with the mountain called Mount Oddie? A. Yes, in a general way.

Q. Do you know any mines or locations called the Silver State or Mizpah? A. Yes.

Q. The Valley View and Lucky Jim?

A. Yes.

Q. Since when have you known them?

A. Well, those are claims that I knew right from the first, when I first went there; that is, the second time I went there; the first time I went, in September, I was only there two or three days; then I went out in October, and back in November, then I spent about two weeks there, and investigated into the camp in general.

Q. Were the locations mentioned well known to the majority of the people there in Tonopah, or little known?

(Testimony of Uri B. Curtis.)

A. Those claims I mentioned are very well known; in fact, they are quite important claims in the camp.

Q. Do you know Charles J. Carr?

A. Only to meet him; never have known him, what you term know him.

Q. You knew him in Tonopah, and saw him there?

A. Yes.

Q. You knew who he was there? A. Yes.

Q. You are familiar with Mount Oddie?

A. In a general way, yes.

Q. State, if you remember, of being on Mount Oddie in company with anybody in this courtroom?

A. Well, I was up on Mount Oddie about the first time I was around the town very much with Mr. Ramsey and Mr. Salsberry; I was becoming interested; in fact, I went back to Tonopah to see if I could get hold of property.

Q. This time that you went up there was about what day?

A. About the 5th, 6th or 7th of December, 1901, somewheres in there.

Q. I attract your attention to what is now known as the North Star main shaft. Do you know where that is? A. Yes.

Q. Do you know where the plant and hoist is there?

A. I am very familiar with it.

Q. Attracting your attention now to a radius of a couple of hundred feet from that shaft, were you or were you not at that place on or about November, 1901?

(Testimony of Uri B. Curtis.)

A. I was within, I should say, a very few, a couple of hundred feet, anyway, from right where the shaft is located now, the North Star shaft.

Q. Were you there in the daytime or night-time?

A. Yes, in the daytime.

Q. State whether or not there was any cut or excavation within the radius of say 200 feet from where that shaft is, at that time?

A. I did not see any.

Q. Attracting your attention to an excavation, that would be, say four or five feet deep, two or three feet wide, and six or eight feet long, or larger, was there or was there not any such excavation there at that time?

A. No, sir.

Q. State whether or not you know the general reputation of Charles J. Carr in the community in which he lived for truth, honesty and integrity; answer it yes or no?

Mr. GOODWIN.—I object to that on the ground the proper foundation has not been laid.

The COURT.—I suppose you could raise the question of the character of a witness, without laying any ground for it. I will allow the question.

(Plaintiffs except.)

A. In a general way.

Q. State whether it was good or bad.

A. Why, it was bad, from what I generally knew; my general impression.

(Testimony of Uri B. Curtis.)

Cross-examination.

Q. Did you ever have any dealings with Mr. Carr, Mr. Curtis? A. No, sir.

Q. Now, what did you ever hear said about Mr. Carr, other than that he was a drinking man?

A. Well, they said about selling claims, that he didn't seem to have—selling them two or three times; selling town lots two or three times.

Q. Now, as a matter of fact—

Mr. METSON.—Let him answer the question you asked.

A. I say that is what I heard. I didn't know it of my own knowledge, anything that I was interested in.

The COURT.—It is the general reputation in the community, not your own knowledge.

A. That is what I heard about him, that he sold claims two or three times over, and town lots two or three times over.

Q. Anything else?

A. Why, no; only just rumors of that kind, you know.

Q. Don't you know that Mr. Carr was one of the early men on the ground there? A. Yes.

Q. That he located and had at one time title to some of the best ground that there is there to-day, some of the really good ground?

A. Yes, I understood that.

Q. Don't you know that just through his good heart,

(Testimony of Uri B. Curtis.)

in one way and another, he has just been wheedled out of all those interests, until there is nothing left?

A. He undoubtedly sold them.

Q. Didn't he give a whole lot of them away?

A. I have understood that.

Q. Don't you know that he gave away a lot of those town lots there to Tom, Dick and Harry?

A. I have understood that.

Q. Don't you know that he gave interests in those locations that he made to different people?

A. I am not familiar as to that.

Q. Now, you never heard anything about Mr. Carr excepting some person that was kicking because some complication of title had arisen over some town lot that he had either given them or sold to them there, did you?

A. Well, that is the way it was generally, sold two or three times; that was what I heard, that he had sold lots two or three times.

Q. Don't you know that there was a scramble for the possession of those lots there in those early days?

A. That was before my time; things were pretty well settled when I got there; those early stories you hear, and go along, and they are good and bad.

Q. Did you ever hear any one say that Mr. Carr was dishonest or would lie?

A. Well, I could not say who said it, but that was the general impression, that he did not stick to the truth always.

Mr. T. L. ODDIE, a witness called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. State your name, please?

A. Tasker L. Oddie.

Q. What is your employment?

A. I am employed by the Tonopah Mining Company, and several other companies, in the town of Tonopah.

Q. What is your residence? A. Tonopah.

Q. How long have you been a resident of Tonopah?

A. Since October, 1900.

Q. What is the character of your employment?

A. I have had charge of the main companies there, several of the main companies.

Q. You are familiar with the Mizpah location?

A. Yes.

Q. In Tonopah? A. Yes.

Q. Is or is it not a well known location, and its situs well known?

A. Well, I consider it the best known of any in that district.

Q. To whom is it the best known or well known?

A. I think everybody in the district, because that was the main point of attraction to every one who came into that part of the country at that time.

Q. You know a knoll there called Mount Oddie?

A. Yes.

Q. And I suppose you have been familiar with that mountain, more or less? A. Yes.

(Testimony of T. L. Oddie.)

Q. I will show you a photograph which has been marked Complainant's Exhibit 3, and will ask you to look at that, and see if you can identify any buildings thereon?

A. Yes; the company house and the company office, both of which I have occupied. I occupied the company house until six months ago, and the office from the time of its completion.

Q. Do you know when you first went into the company house? A. Some time in June, 1902.

Q. What locations up there in that vicinity did you have charge of, if any, in 1901 and 1902, the fall of 1901?

A. I had charge of the Butler group, which consisted of the Mizpah, the Silver Top and the Desert Queen, which are up in this end of the group, the east end.

Q. You have heard some of the testimony here; do you know the cut that Mr. McCune testified to, do you remember that? A. Yes.

Q. State whether or not there was any cut in the vicinity of what is now known as the North Star main shaft, prior to January of the year 1902?

A. Well, I can speak up to the time of December 13th. I know there was none up to that time. I left for the east on that day.

Q. You returned from the east when?

A. December, 1901, I should say, and I returned some time about the middle of January, 1902.

(Testimony of T. L. Oddie.)

Q. Do you know whether or not that cut had been created by that time?

A. I didn't see it until some time after that.

Q. It was in plain view, was it or not, from the town, from the postoffice and Davis & Lothrop's and Wells, Fargo & Company's office, and the company's office?

A. Yes; right up on the side of the mountain.

Q. During the fall of 1901, were you or were you not up on the hill between the residence and the building at the left-hand side of the photograph daily when you were in town?

A. Yes. I cannot say that I went over that particular piece daily, but I have walked all around there daily; it is my business to be there every day.

Q. State whether or not in the year 1901 any monuments were erected marking, or which marked the Dave Lewis Hope location in that vicinity, to your knowledge?

A. I never saw any of the Dave Lewis Hope monuments at all.

Q. State whether or not you were interested in monuments on or about this ground, and whether or not you were watching for monuments and the monuments that were on the ground during that time?

A. Yes; shall I explain why?

Q. Yes, explain.

A. Because I located with two friends of mine a tunnel site on the north side of the mountain in the spring of 1901; and we abandoned that tunnel; we found the

(Testimony of T. L. Oddie.)

G. & H. tunnel had started, and Mr. Brougher and myself each bought an interest in the G. & H. tunnel, and we located that 3,000 feet in length, and the location, the certificate, or whatever it was, claimed 750 feet on each side of that tunnel line, and we were always under the impression that we could hold all of the ground inside of those lines, and we were pretty anxious to watch it, because I know at one time some men in Tonopah made a location east of the Mizpah, and we told them flatly that they conflicted with that tunnel right, and they took the monument down; the Phebe brothers did that; and we were continually watching the ground. Gordon, Hudgens and Manning were the other three owners besides Mr. Brougher and myself; and up to the time the Ivanpah claim was brought to my notice, I never knew of any claims covering that ground, because we always believed we were entitled to that ground.

Q. Do you know Charles J. Carr? A. Yes.

Q. Did you know him when he lived in Tonopah?

A. Yes.

Q. State whether or not you knew the general reputation for truth, honesty and integrity of Charles J. Carr in the community in which he lived; answer yes or no?

A. Well, I know when he lived there his reputation was not good.

The COURT.—He wants to know if you know what his reputation was; that would be yes or no.

A. Simply for hearsay.

(Testimony of T. L. Oddie.)

Q. State whether his reputation in the community in which he lived was good or bad for truth, honesty and integrity? A. It was bad.

Cross-examination.

Q. Bad in what way?

A. The reports that came to me about certain things that he had done.

Q. What was claimed that he had done?

A. Well, the same thing that Mr. Curtis said, selling lots to several different people; I know that he tried to sell a lot of mine, the one that I afterwards sold to Frank Golden.

Q. Did he have a location covering that lot?

A. In that particular case, he claimed that his location had covered one end of it, or he thought it did.

Q. He thought that his location covered your lot?

A. He may have thought that.

Q. Don't you know, as a matter of fact, that he honestly believed that he had an interest in that lot?

A. I never knew that, because at that time a number of people told me he had sold the same lot to several different people.

Q. Did you ever hear of his attempting to sell a lot that was not included within what he understood to be his location of the townsite there?

A. Well, I cannot say as to any particular lot that he tried to sell; I am simply saying what was his reputation, and what was the common talk around town at that time, as to lots in general.

(Testimony of T. L. Oddie.)

Q. He at one time owned, or had a location, on the major part of the town, did he not?

A. He had an interest in the West End claim, which took in part of the town.

Q. Didn't you know of his giving away a lot of lots there?

A. I know that he did give away lots.

Q. Don't you know that these conflicts that arose, arose principally between people that claimed he had given a lot to them before he had given it to the other fellow?

A. I don't know that.

Q. Did you ever know of his making a conveyance of a lot, and taking the money, and then turning around and selling, or attempting to sell that same lot to somebody else?

A. Simply from what had been told me; that had been told to me by a number of people, that he had done that.

Q. What besides the Golden lot did you ever hear of his doing?

A. I don't know what lots they are; I have heard people talking about them, I don't know the particular lots.

Q. Is not that all you have ever heard against Charles Carr, except that he would get drunk?

A. There were a good many ugly reports around town about him, before he left and after he had left.

Q. In what way?

(Testimony of T. L. Oddie.)

A. Well, that he didn't—a good many different things; that he had gotten money in certain ways that people criticised.

Q. In what way?

A. Well, I know one thing, if you want me to say it; I was district attorney at that time, and a certain man that is there now came to me and told me that Carr when he was under the influence of liquor, had signed a name to a check which he should not have signed.

Q. Was he drunk at the time?

A. That is what he told me.

Q. Did you ever know or hear of Charles Carr doing anybody a wrong, or saying anything to injure any person when he was himself?

A. He never did to me.

Q. Did you ever hear that he did to any one?

A. No, I cannot say that.

Q. Isn't he the kind of a man, you know and realize and recognize as being one of those unfortunates, who was at that time his own worst enemy?

A. I felt that way, that Mr. Carr gave away a great deal.

Q. Didn't he give away enough, if he had held it that to-day he would have been worth millions of dollars?

A. Either gave it away or sold it.

Q. Don't you know that he gave enough away that if he had held it he would have been worth millions of dollars to-day; don't you believe that?

A. I believe he gave away enough to make him very rich.

(Testimony of T. L. Oddie.)

Q. A very rich man? A. Yes.

Q. And don't you know that when he had money there, and was working that lease, that his hand was always in his pocket to help anybody in distress?

A. I know he was very liberal.

Q. And wasn't he very kind and considerate whenever he was himself?

A. As far as I ever saw he was that way; as far as my personal dealings with him are concerned, I had business dealings with him, but all my business dealings were in black and white; I used to transact his business as I did other leasers, and the books showed them everything; everything was in black and white.

Q. There never was any attempt or effort on his part to beat or gouge you, or anything, on his part?

A. No, not with me, personally.

Q. Have you heard any more about Charles Carr than you have heard about other men in the community there, Mr. Oddie, that stand pretty high and have a good deal of money?

A. Yes, sir; because there was a strong feeling against Mr. Carr at that time on account of certain things that people said had happened.

Q. With reference to these lots?

A. No; other things; with reference to lots in a certain way; that is, lots came into this thing you are speaking of.

Q. I want to get at the facts?

A. I will tell you the report that went around town:

(Testimony of T. L. Oddie.)

That he and certain other men tried to burn a building for the sake of pilfer, and it made the town wild, because people had all the money they had invested right in the buildings there in town.

Q. Did you ever inquire into the facts to find out whether there was any foundation in fact in that?

A. No, I never did.

Q. Don't you know in a little community like that there are a great many things said and reported, and a good deal of common gossip, that has no foundation in fact in it?

A. That is always the case in a small town.

Q. And particularly so if a man drinks or gets down on his uppers, and walks out of the place, like Charlie Carr did there?

A. It is human nature in every town that I have ever seen to spread reports.

Q. And kick a dog that is down?

A. I don't think necessarily.

Q. Is not that human nature?

A. Well, human nature is human nature; I don't know whether one place is any different from another in that way.

Q. You say in 1901 you were watching this ground very carefully to see as to stakes? A. Yes.

Q. Because of your tunnel location?

A. I would not say as much stakes as locations, and locations mean stakes.

Q. That covered what period of time?

(Testimony of T. L. Oddie.)

A. That covered, oh, for a long time after that.

Q. Took it through the fall of 1901 did it, covered that period of time? A. Yes.

Q. During 1902, did it cover that period of time?

A. Yes, it covered all the time up to the present day.

Q. Up to the present day? A. Yes.

Q. Did you examine along in where the present North Star shaft is, did you watch that country in through there?

A. I didn't watch that particular spot; I watched all the side of the hill, and used to go over it frequently.

Q. In other words, you kept a general supervision over that section of country?

A. Yes, myself and my partners.

Q. You found those Ivanpah corners and stakes as soon as they were set up?

A. I didn't look particularly at them, because my partners told me they had been set up afterwards.

Q. When did they tell you that?

A. Some time before June, 1902, because at that time we made a transfer of some of the rights.

Q. Didn't they tell you that the Mizpah Intersection or Dave Lewis Hope corners were set up?

A. I never knew a thing about that; they didn't tell me a thing about it, they may have known it, but they didn't tell me a thing about it until some time after this question came up.

Q. You don't mean to say that as you gathered the

(Testimony of T. L. Oddie.)

facts since, that these stakes were not set up at that time?

A. I cannot say there were no stakes set up in particular places; I do know some of the ground so well that I know that.

Q. Don't you know that at least as early as May, that those stakes were up?

A. No, I do not; the Dave Lewis Hope stakes, you mean?

Q. Yes

A. No, I do not, because I never had seen them; it was some time after that that my attention was drawn to the fact that there was a claim called the Dave Lewis Hope.

Q. About May, didn't you know the Dave Lewis Hope claim?

A. I don't remember anything about it at that time; I heard the name simply, Dave Lewis Hope claim, some time after January, when I came back, of 1902, I don't recollect just what time.

Q. Now, Mr. Oddie, do you recollect consulting Mr. Jackson with reference to the Dave Lewis Hope, and Mr. Jackson advising you that the Dave Lewis Hope location was good, and advised you not to fight it?

A. I remember getting a letter from Doctor Porter, I think, about the Dave Lewis Hope, and I remember consulting lawyers about their claim.

Q. Didn't you consult Mr. Jackson about the Dave

(Testimony of T. L. Oddie.)

Lewis Hope, and didn't Mr. Jackson advise you the location was good, and not to fight it?

A. I did; but I don't remember just when it was; that was after it was brought to my knowledge.

Q. Afterwards didn't you meet Doctor Porter at Tonopah, and discuss the Dave Lewis Hope claim with him?

A. Well, I discussed it when he came there; I don't remember just when it was.

Q. The testimony is that Doctor Porter got there about the 24th of April, 1902, and he left some time about the 1st of July; during that period of time you met Mr. Porter?

A. I met him when he came in there.

Q. Prior to that time, don't you recollect that you had consulted with Mr. Jackson, the attorney, with reference to the Dave Lewis Hope, and that he had advised you that the location was good?

A. No, sir; I don't remember consulting him before that at all.

Q. About that time?

A. I don't think it was at that time; I think it was some time afterward, if my recollection is correct; I know it was.

Q. Do you recollect when Doctor Porter was there talking with you about the Dave Lewis Hope, and you advising Doctor Porter to prepare a notice of trespass, he representing to you that they had started a shaft up there?

A. I don't recollect that, no.

(Testimony of T. L. Oddie.)

Q. Think it over carefully, Mr. Oddie. Don't you recollect having a talk with Doctor Porter in which the question of serving a notice, I think, came up, and you discussed the matter with him, and concluded it would be a good plan, and Mr. Jackson was called on, or Doctor Porter went to Mr. Jackson, and Mr. Jackson prepared the notice?

A. I don't remember anything about that; I remember talking to Mr. Jackson about the Ivanpah later, and I remember the Dave Lewis Hope claim came up in my mind some time after that, and I remember when Doctor Porter came in, and I remember that he spoke to me about the claim, but I don't know what it was.

Q. He had quite a talk with you, didn't he?

A. Yes, he had quite a talk with me about some other proposition first; I don't think this was brought up until some time afterward; I know it was never clear in my mind until after I get a letter from Doctor Porter, quite a long time afterwards, and I don't think that I replied to the letter, because I didn't consider there was any basis for it at all.

Q. If what I have said has refreshed your memory, see if you cannot recollect something about that conversation, if you had such a conversation relative to this trespass notice?

A. I don't remember a thing about that; it has slipped my mind if I ever had it; I don't think I did, because I don't see what object I would have if it is inside of our ground, inside of our lines that we claim.

(Testimony of T. L. Oddie.)

Q. Didn't you look up the Dave Lewis Hope claim while you thought you had that tunnel location?

A. No, sir.

Q. Was there a period of time that you were thinking about fighting for that ground?

A. Well, there was a period of time when we didn't know what the rights of that ground were, as between that ground and the Ivanpah, but that is the only claim that I thought conflicted.

Q. Didn't you hear of the Dave Lewis Hope as soon, or sooner than you heard of the Ivanpah?

A. No, sir.

Q. Where did you first hear of the Ivanpah?

A. I heard of that through my partners; it was some time before June, I cannot tell the date.

Q. Some time before June?

A. Yes, it was some time before that, because Mr. Brock from Philadelphia came out, and Mr. Brougher, and I went to him and persuaded him to take the controlling interest in the G. & H. tunnel; we explained to him that there was no conflict north of the Silver State, except the North Star tunnel and the Ivanpah claim; I told him the rights had not been determined as between those two properties, and he would have to take it with his eyes open; I said nothing about the Dave Lewis Hope, because I never knew it had any bearing on that proposition.

Q. At that time you knew of this work that had been done up there?

(Testimony of T. L. Oddie.)

A. I knew that Mr. Ish had done some work.

Q. Didn't you also know that somebody had run this cut where the present North Star shaft is?

A. I knew there was a cut there.

Q. Didn't you know who had been running it?

A. I supposed Mr. Ish had done it.

Q. But, as a matter of fact, didn't you inquire?

A. No, I did not; my partners told me this work was being done by the Ivanpah people.

Q. Afterwards, didn't you know of Doctor Porter coming there on the ground and doing some considerable work?

A. Yes, after that, I knew all about Doctor Porter's coming there.

Q. You knew all about the Dave Lewis Hope, then?

A. Knew all about it then; yes; because I had a letter from Doctor Porter.

Q. You had a letter from Doctor Porter prior to his coming there, did you?

A. Yes, that is my recollection; I think it was from Doctor Porter, or somebody interested in that claim.

Q. Are you a stockholder in the defendant corporation?

A. No, sir; I have not a share.

Q. You have no interest in it? A. No.

Redirect Examination.

Q. Mr. Oddie, how many fires in Tonopah did you hear connected with Mr. Carr, or suspicion, talked about with reference to Mr. Carr, if any?

(Testimony of T. L. Oddie.)

Mr. GOODWIN.—I object to that.

The COURT.—As to the number, the fact that he was connected with it, you might answer in connection to that, but it is not the number. You may ask the question; anything of that sort, there is liberality to both sides.

A. Well, I know of one that the officers told me of.

Q. Did you hear anything, any talk about Mr. Carr selling some claim more than once to different people?

A. No, not mining claims, except lots; he had a little trouble in the lease that he had first with one of his partners, but I don't know how that was settled.

Q. Did you hear any talk about a location called the Midway?

A. Yes; well, I simply knew of the Midway.

Q. You just knew of the Midway?

A. Yes, I knew all about the Midway location.

Q. Did you hear any talk with reference to Mr. Carr and the Midway? A. No.

Q. Did you hear any talk with reference to lots being disposed of at least three times to different persons by Mr. Carr?

A. Yes, those are the lots in town.

Q. Sold, or given away, or what; what did you hear?

A. I heard that he sold them to several different people.

Q. Did you hear anything about any hold-ups in Tonopah?

A. No, not in relation to Mr. Carr.

(Testimony of T. L. Oddie.)

Q. Do you remember the time the town was disinfected over there? A. Yes.

Q. Was that in 1901 or 1902?

A. That was in 1902.

Q. Did you have any business dealings or seek any whatever from Judge Jackson until after 1902, the first of January?

A. I didn't think I ever saw Judge Jackson until some time after that, I don't remember just how long it was.

Q. I want to get at about what time you first saw Mr. Jackson, if you remember?

A. I remember it was some time before June, 1902, but I cannot recollect when he came, some time in the spring.

Q. Mr. Jackson didn't go out to that country until you had gone East in December did he?

A. No, not until some time after that.

Mr. T. M. McCABE, a witness called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. PITTMAN.

Q. What is your business? A. Miner.

Q. How long have you been a miner?

A. About 20 years.

Q. Where were you born? A. Virginia City.

Q. Have you ever resided in Tonopah?

A. Yes, sir.

(Testimony of T. M. McCabe.)

Q. When did you go to Tonopah first?

A. I think it was October 25th, 1901.

Q. Have you ever held any official position in this state, Mr. McCabe? A. Yes, assemblyman.

Q. From what county? A. Nye County.

Q. What year? A. 1903.

Q. Are you acquainted with Mr. Charles Carr?

A. Only by reputation.

Q. Did you ever see him in Tonopah?

A. Yes, sir.

Q. Do you know what reputation Mr. Carr bore in the community in which he lived, in Tonopah, as to integrity, honesty and veracity; you may answer that yes or no, if you knew his general reputation?

A. Well, it was bad.

Cross-examination.

Q. Why do you say it was bad?

A. Well, from what I heard from the general public.

Q. What did you hear them say?

A. Well, I heard that his reputation was bad.

Q. Well, what did you hear them say?

A. I heard them say lots of things; I can't remember at the present time.

Q. Well, what were they?

A. I heard one time they were going to run him out for trying to set the town on fire.

Q. Who was going to run him out?

A. Well, the general public.

(Testimony of T. M. McCabe.)

Q. Were you one of them? A. No, sir.

Q. Were you there? A. Yes sir.

Q. What else did you hear?

A. I heard that he sold lots there, sold them a couple of times.

Q. What else did you hear?

A. Well, several things, but I don't remember the other things that I heard right now.

Q. Did they subpoena you here?

A. Just about an hour ago.

Q. Did they send down to Tonopah to have you come here? A. No, sir.

Q. Just happened to catch you in town?

A. Yes, sir.

Q. Did you hear of anybody else down in Tonopah that sold lots or claims more than once?

A. I believe I have, yes.

Q. There was a good deal of trouble there with titles for a while, wasn't there? A. Yes.

Q. And every fellow that got into trouble blamed the man that he got the title, or supposed title, from, didn't he? A. Yes, sir.

Q. Did you know Charlie Carr during the time he was residing there in Tonopah?

A. Only by reputation; knew the gentleman to see him on the street.

Q. How long were you in Tonopah?

A. I went there the 25th of October, 1901.

(Testimony of T. M. McCabe.)

Q. And have been there ever since; that is, it has been your residence ever since? A. Yes, sir.

Q. What is your business there? A. A miner.

Q. And you were not acquainted with Mr. Carr during that time, personally?

A. Just as I told you, I saw him on the street, and by general reputation.

Q. There were some pretty bad men in there at that time, were there not? A. Yes, sir.

Q. Men, with pretty hard reputations, weren't there?

A. Yes, sir.

Q. And his was a little worse than any of the balance, was it?

A. Well, his reputation was bad.

Q. His reputation was bad?

A. That is, from what I could hear.

Q. Did you ever know of his doing anything there except drinking too much whisky for his own good once in a while? A. Well, no, sir.

Q. Did you hear of his doing a great many kind and good things? A. No, sir, I never did.

Q. You never heard of his giving lots there to a number of people, and things of that sort? A. No, sir.

Q. You never did? A. No, sir.

Q. You never heard of his giving his money right and left there for all charitable purposes whenever he had it?

A. I heard he was charitable, I heard that.

(Testimony of T. M. McCabe.)

Q. Didn't you always hear he was mighty kind-hearted? A. I have heard that too.

Q. Don't you believe he is the kind of man that would have to know a man was pretty bad before he would go on the stand and testify that his reputation was bad? A. Yes.

Q. Don't you know he is the kind of man that would not do a man an injustice unless he was absolutely certain of the ground that he stood on?

A. I don't know that.

Q. Don't you know that?

A. Well, I will tell you what I do know; I was in Mr. Stinson's store one evening and Mr. Carr came in there and stole a hat.

Q. Did you see him steal it?

A. Yes; I was right there, and I saw Mr. Stinson take the hat away from him.

Q. Did you report it?

A. Mr. Stinson was right there.

Q. Now, what did he do; Stinson was right there, and Stinson got the hat; Carr didn't steal the hat, did he?

A. His intentions was all right, he had the hat under his coat at the time, although Carr was drunk at the time.

Q. He was drinking, was he?

A. Well, he was drunk.

Q. Now, when did you first hear that Mr. Carr was such a bad man?

A. Shortly after I arrived in Tonopah.

(Testimony of T. M. McCabe.)

Q. Did you hear he was a very bad man when he had that lease there and was making money?

A. No, sir; I never heard anything.

Q. He was a good man as long as he had that lease and was making money; as long as he had money he was a pretty good fellow wasn't he? As long as he had that lease, and properties, and as long as he had the townsite, and was giving away town lots, and as long as he was making money, he was a pretty good fellow, wasn't he? A. Yes, sir.

Q. Wasn't he considered one of the prominent men in town?

A. Yes, sir; I believe that he was a good charitable man all right.

Q. And don't you believe that to-day?

A. Well, to a certain extent I do.

Q. Do you believe that Charlie Carr would do, intentionally, in his sober moments, any man a wrong?

A. Not in his sober moments, I don't believe that he would.

Q. You don't believe that he would do it, do you?

A. No, sir.

Redirect Examination.

Q. Was he ever sober in Tonopah at all?

A. Yes, I have seen Carr sober there.

Q. How frequently? A. Well, I cannot say.

Q. Well, what would you say of him; did you see him very often?

A. I have seen him on the street occasionally, yes.

(Testimony of T. M. McCabe.)

Q. Now judging from the times you saw him, was he drunk as frequently as he was sober, or more so; just make a comparison?

A. I think it was about a standoff.

Q. And you have not attempted to give your views here respecting Mr. Carr except in answer to counsel; you were asked to state the general reputation in the community; is that what you have endeavored to do?

A. Yes.

Q. And have you tried to state that truthfully, as to what his general reputation was? A. Yes, sir.

Mr. W. J. HARRIS, called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. PITTMAN.

Q. Mr. Harris, where do you reside at the present time? A. Reno.

Q. How long have you resided in Reno?

A. Since the last of September.

Q. Where did you reside prior to September?

A. In this state.

Q. Have you ever resided in Tonopah, Nevada?

A. Yes, sir.

Q. When did you first go to Tonopah?

A. The first few days in March, 1902.

Q. What was your business in Tonopah?

A. I was cashier of the only bank there at that time.

Q. What is your business now?

(Testimony of W. J. Harris.)

A. Cashier of one of the banks in Reno, the Farmers' & Merchants' National.

Q. Are you acquainted with Mr. R. B. Davis?

A. Yes, sir.

Q. Were you acquainted with Dave Lewis?

A. Yes, sir; after I became a resident of Tonopah, I didn't know him before.

Q. What were the circumstances of your acquaintance with Dave Lewis?

A. Mr. Lewis was a man with the business of prospector and the bank, the first location of the bank was in Cutting & Edwards store, and Mr. Lewis used to come in there frequently, and he was a man that drank at times, and when my attention was first called to him, one of the clerks in the store was talking to him about, I think, rather joking him about a mining location that he had.

Mr. GOODWIN.—We want to interpose an objection here that any conversation had with Lewis not in the presence of his co-locator, is incompetent, and heresay.

The COURT.—That is the same objection that was made a while ago; I do not want it understood that I am ruling on that proposition, but subject to your objection I will allow the testimony to be taken, and to be considered by the Court if deemed relevant, and if not, it will be excluded.

(Plaintiffs except.)

A. It came to my notice after, that Mr. Lewis

(Testimony of W. J. Harris.)

claimed a piece of ground on Mount Oddie in conflict with the North Star tunnel location, in which I was a part owner. I didn't pay much attention to the conversation there in the store, until I heard it several times, then I began to inquire who this man was and whether he did have any location on Mount Oddie in conflict with this property that I had recently bought an interest in; I found out that a friend of mine, that I had known for twenty years, Mr. R. B. Davis, who was then a merchant there, and is now, I guess, was a particular friend of this man Lewis, in fact, I understood that Lewis rather looked upon him as his particular friend and adviser. I went to Mr. Davis, and called him by his given name, "Dick," I said—

Mr. GOODWIN.—We object to what he said to "Dick" as entirely incompetent.

Q. Well, what did you do with "Dick"?

A. Dick and Mr. Lewis and myself went up on Mount Oddie one Sunday evening, probably five o'clock or four o'clock, I don't know when it was, it was on Sunday, because Sunday was the only time that I went around on the hills at all, for the purpose—

Mr. GOODWIN.—Never mind the purpose, we object to the purpose; state what you did.

The COURT.—Your motive, that would not make any difference; just what occurred, unless they want to call it out on the other side.

(Testimony of W. J. Harris.)

A. We went up along the trail right out from Lothrop & Davis' store, as nearly a short cut as we could find up along the Mizpah, up to where the present North Star shaft is, passing a cut which was testified to as having been done by McCune and Enright, and enlarged by Mr. Porter and somebody else; we passed by that cut, passing along the North Star line to the ridge, and there we found—can I say it was pointed out to me?

Mr. GOODWIN.—Certainly, whatever was done.

A. It was pointed out to me by Mr. Lewis as being their location monument; from there we looked for an excavation of some kind, looking for preliminary work presumed to have been done on the Dave Lewis Hope claim; from there we went—well, we didn't find any; we were pointed out a place where work was done, which proved to be nothing but the monument of one of the tunnel sites, I think it was the G. & H. tunnel; it was a mound of stone and right by the side of it—well, I could see nothing at all before it was pointed out. We asked where the work was done—can I state what Lewis said?

The COURT.—Yes.

Mr. GOODWIN.—Note our exception, please.

A. Mr. Lewis says, "Here in a place"; there hadn't a pick or shovel ever been put in that ground. That was by a stone monument north over the ridge, towards the North Star tunnel site.

(Testimony of W. J. Harris.)

Q. (Mr. METSON.) You mean the opening into the tunnel? A. The opening into the tunnel.

Q. On the north side of the mountain?

A. On the north side of the mountain. From there we passed along until we found the low portion, or off from the mountain entirely, and found the road, struck the road going to town; we came to town and went to Lewis' tent, which was on Main street.

Q. Let me interrupt that proposition there, I am familiar with the testimony. Did Mr. Lewis state that he had this cut dug, that is, the cut near the North Star shaft? A. He did.

Q. Did he state the date that he had it done?

A. He said in February, but he said his time-book would show the exact date.

Q. Well, go on?

A. We went to Mr. Lewis's tent, got the time-book, it was then getting dark and Mr. Lewis lighted his candle and produced the time-book; Mr. Davis took the time-book; the time-book—

Mr. GOODWIN.—I object to that as incompetent; if you have the time-book, produce it.

A. I can say what the time-book stated; I saw the time-book.

Mr. PITTMAN.—I will state at this time, for the benefit of counsel, that that time-book is gone; it was lost, and we have been unable to find it anywhere, which we will make proof of by the next witness, who had it in

(Testimony of W. J. Harris.)

his possession, and this evidence can go in subject to that.

Mr. GOODWIN.—We make our objection, and I understand the court allows it subject to our objection.

The COURT.—Certainly.

A. The time-book contained the names of Enright, the name is A. L. Enright, but I could not say whether that was there or not, Enright and McCune; I asked where the men were and was told, that Enright was tending bar.

Q. (THE COURT.) Who told you?

A. By Lewis; Enright was tending bar across the street in a saloon owned by or run by a young man from Silver City, Bert Allen; I went across the street with Mr. Davis, Mr. Lewis said that he would be there; and I asked Mr. Enright if he did the work up there, and he said, yes; what time, and he said the first of February, seemed to know the exact date; I asked him another question or two and he would not answer, said—

Mr. GOODWIN.—Never mind what he said.

A. The reason he would not answer—

Mr. GOODWIN.—Never mind, you don't know his reason.

A. He stated his reason. We went over and got Lewis and came back, and he answered every question we asked him.

(Testimony of W. J. Harris.)

Q. Where was this location monument situated with reference to the peak or apex of Mount Oddie?

A. Well, it was up very high on the ridge, and I should judge that it was close on to 200 feet, but I have learned since that it was—

Mr. GOODWIN.—State your best judgment.

A. My best judgment is that it was in the neighborhood of 200 feet, or nearer; it was high up apparently. It was going over this from the way we went. It was very high on the ridge.

Q. Was the North Star tunnel line marked out at that time? A. It was.

Q. Which direction from the North Star tunnel line was this monument pointed out by Dave Lewis?

A. Quite a distance east toward the Mizpah Extension.

Q. Could you approximate how far east it was?

A. From the tunnel line?

Q. Yes. What would be your approximate judgment?

A. Well, it was close on to 300 feet; it was over 200 anyhow.

Q. How much higher did you say the top of the mountain was than the monument?

A. Than the Dave Lewis monument?

Q. Yes.

A. Well, as I said, it was fully 200 feet from that monument to the peak, I should judge.

(Testimony of W. J. Harris.)

Q. Did Lewis show you any other monuments represented to be the monuments of the Dave Lewis Hope claim?

A. In pointing out where he did his work, he pointed to the stone monument, which I was satisfied was the G. & H. tunnel monument.

Mr. GOODWIN.—Just state what he did, and not what you are satisfied.

A. He didn't point out any other monument; pointed there where he did his work, preliminary work, "Right there," he said, and kind of moved his hand.

Q. On which side of the mountain was that?

A. On the northern slope, but kind of east of the monument, and down in a sort of a little draw there.

Q. Was it on the opposite side of the mountain from town?

A. The opposite, could not see town; it was clear over the ridge.

Q. What kind of work was done around this monument? A. Absolutely nothing at all.

Q. Was there any post in this monument?

A. I think there was a little peg, or something sticking up there. I don't think there was any post. I think a surveyor's stick, or something like that.

Q. Did you go up on the hill more than once?

A. I have been up on the hill quite a number of times after our shaft was started; used to go up frequently of a Sunday.

(Testimony of W. J. Harris.)

Q. When was the last time you were up there, Mr. Harris?

A. I think the last time I was there when the patent notice was posted on the claim. I was the secretary at that time.

Q. Have you ever seen that location monument, the Dave Lewis Hope claim, since it was pointed out to you by Dave Lewis? A. Yes, sir.

Q. Did you see it more than once?

A. I think more than once, I could not say how many times.

Q. There has been some evidence introduced in regard to an attachment notice posted on that claim, do you know anything about that?

A. I saw it on one occasion.

Q. Where was it?

A. It was on this 4 by 4 piece; it was a 4 by 4 post there.

Q. What 4 by 4 post?

A. Dave Lewis location monument, or post, that he pointed out to us.

Q. Was there a location notice at that monument when you went there?

A. I never saw it; the post was marked, "Dave Lewis Hope"; I don't know whether the words "claim" was on it, or "mine," or anything; "Dave Lewis Hope," those three words were on there, on this post, in pencil.

Q. Did you see any other notice, an attachment, posted on that claim? A. No, sir.

(Testimony of W. J. Harris.)

Q. In going up, I understand you, you went up over the Mizpah? A. Yes, sir.

Q. And there has been some testimony as to a stake, a wooden stake, that at some time was on the Mizpah claim near a trail or near the upper lease would more correctly describe it, on the Mizpah claim. I show you a photograph, it is near the upper lease, as shown on this photograph; of Mount Oddie, which is an exhibit (Complainants' No. 3). Now, do you remember such a stake?

A. I remember a stake. I remember seeing a stake. I saw it a number of times after May or June, along the trail, marked "Mizpah Intersection."

Q. Just describe this stake, if you can, Mr. Harris?

A. The stake was to the left of the trail, and was two pieces nailed together. I think probably two by fours nailed together. No stone whatever there that I can remember; seemed to be a little bit of an excavation or hole right near it, and as if there had been either sort of hammered in the ground or a little place dug out, no rock there.

Q. What was the character of the ground around there, as to seeing a monument, or concealing a monument.

A. I think the ground right by the stake was somewhat bare; it seemed like a kind of redstone ground there. There was no monument there; there was this stake.

(Testimony of W. J. Harris.)

Q. Were there any signs whatever of any monument of rock or earth having been built anywhere near that stake? A. Not in that vicinity no, sir.

Q. Mr. Harris, you were secretary of the Tonopah North Star Mining Company, that is the defendant in this case, from its organization up until last July, were you not?

A. Up until a few months ago, I think it was about the first of the year.

Q. January, 1904? A. Yes.

Q. And as such secretary you had charge of the books of the company, did you not? A. Yes, sir.

Q. About how much money has been expended on the Ivanpah claim by the defendant company?

A. The total disbursements—

Mr. GOODWIN.—That is entirely irrelevant and immaterial, but we will not object.

The COURT.—It will go in for what it is worth.

A. Approximately the total disbursements, as I remember them, are something like \$70,000.

Q. What portion of that was expended in the year 1902?

A. We commenced operations there early in June of 1902, as I remember. We were active right from the commencement, and I could not say as to what proportion.

Q. Was there a fifth of that spent in the year 1902?

A. Well, we were running a tunnel as well as the

(Testimony of W. J. Harris.)

shaft at the same time, running both, sinking the shaft and running the tunnel.

Q. Where was the tunnel?

A. The tunnel was to the north, over the mountain.

Q. Was it run into the Ivanpah claim?

A. It was headed for the—do you want to know where the line was?

Q. Yes.

A. The line run right through our shaft, we put the shaft right within the tunnel line.

Q. Was the driving of that tunnel continued during the year 1902? A. Yes, sir.

Q. Continuously? A. Yes, sir.

Q. Mr. Harris, was there \$500 expended in the sinking of the shaft in 1902? A. Yes, sir.

Q. Was there \$500 expended in driving the tunnel in 1902?

A. Yes, sir; our pay-roll was from two to three thousand dollars a month.

Q. In 1902 did they continue to drive that tunnel?

A. For quite a period, I don't know how long.

Q. Would you say there was five hundred dollars' worth of work done in driving that tunnel in 1903?

A. I would say so, we let two or three contracts.

Q. Was there five hundred dollars' worth of work done in sinking the shaft in 1903?

A. Yes, sir; several times that; our pay-roll was from two to five thousand a month.

Q. Since what date?

(Testimony of W. J. Harris.)

A. Well, from the time we started.

Q. In June, 1902? A. Yes, sir.

Q. Continuously? A. Yes, sir.

Q. Now, were any roads built, Mr. Harris?

A. Yes, sir.

Q. Where was the road built from, and to where?

A. In order to get our supplies when we first began the shaft, we began the building of the road, which was extremely expensive, had to blast it out of solid rock.

Q. (The COURT.) What age man was Lewis? Was he a young man or an old man?

A. A man about sixty at least.

Q. Where did he come from?

A. I don't know. When I first met him, when I first heard the name, I thought it was another Lewis from Esmeralda County, that I knew.

Q. It was not he?

A. No, not the same man; that man is still in Hawthorne, quite an old man.

Cross-examination.

Q. You say you commenced operations there about the 10th of June, 1902?

A. Early in June, I could not say the date.

Q. Before commencing there, or just about the time you commenced, did you hear of any trespass notice being served on the company?

A. I never received any.

(Testimony of W. J. Harris.)

Q. That is not what I asked you. At that time didn't you understand, as secretary of the company, that a trespass notice had been served, one tacked up at the point where they were working, and one read to the foreman?

A. No, sir; I never heard of it; never heard of any trespass notice being posted on the claim, or served on anyone.

Mr. METSON.—I object as being incompetent and not cross-examination.

The COURT.—There is nothing to object to; he didn't know.

Q. Mr. Harris, as secretary of that company at that time, didn't you understand that Mr. Porter had gone up there and served a notice on your company?

Mr. METSON.—I object to that.

The COURT.—I will make the same ruling to that as the other.

A. I will tell you what I heard.

Q. All I want are the facts?

A. I heard it, some time since we commenced operations, that some one of our company, possibly the president, was notified through the mail, about an objection or protest, or something.

Q. Now, as secretary of the company, and interested in its affairs, wasn't it reported to you that a trespass notice, or notice, was tacked up there on a shed or little building that you had just put up? A. No, sir.

Q. You never heard of any such thing?

(Testimony of W. J. Harris.)

A. No, sir; the only thing I heard was just as I stated.

Q. And you never heard that the foreman in charge of that gang of men there that day, the 10th day of June, 1902, was taken to one side, and this notice read to him?

A. No, sir; I never heard it; the foreman didn't report to me. I will state this: that the development was not under my management at all; once and a while I would see the foreman.

Q. Did you ever see a copy of that paper? (Hands paper to witness.)

A. Not that I can remember.

Q. What time was it that you and Lewis and Davis left that Sunday afternoon?

A. It was along in the afternoon, towards evening, because after reaching town, returning, it was dark enough in the tent to light a candle to find his time-book.

Q. When was that?

A. Well, it was before we commenced operations there, and it was either April or May, but I could not say.

Q. April or May? A. Yes, or 1902.

Q. Did you know when Mr. Porter came up there?

A. Yes.

Q. Was it before or after he came up there?

A. I really could not say as to that.

Q. What is your best judgment?

A. I understand that he testified to coming in April.

(Testimony of W. J. Harris.)

Q. The 24th of April, as I understand the testimony, about that time.

A. It was very apt to be after he came, but I could not say whether it was before or after. I do not think it was in the month of March, because I came there early in March, the first few days in March. I think it must have been April or May.

Q. Of course, if it was May it was after Doctor Porter came? A. Yes.

Q. Did he take you right up first by this cut?

A. Well, we went by the cut, and I think we stopped there and looked at it. He said that he run it, he had it done.

Q. He said he had it done? A. Yes.

Q. Was that cut enlarged and a shaft sunk?

A. Was it enlarged?

Q. Yes; was it a cut about 14 feet wide running in with a shaft six or eight feet deep in the center, or was it just a plain cut about four feet wide?

A. Well, it was in the nature somewhat of a shaft; it was an excavation, a hole, really.

Q. Down in the ground? A. Yes, sir.

Q. If Doctor Porter did that work, then that must have been after he came that you went up?

A. I don't know who did it, but Lewis said that he had it done.

Q. What I mean is this: The testimony on our side is that the cut was run there, and that after Doctor Porter came he went up and enlarged it, and sunk this shaft;

(Testimony of W. J. Harris.)

that is, he widened it, and afterwards sunk this shaft; if that shaft was there, according to the testimony—

Mr. METSON.—It strikes me this is argument.

The COURT.—The idea is, whether it was before or after Doctor Porter came.

A. It is very likely to have been after the 24th of April, very apt to have been after.

Q. You state positively that what you saw there was a shaft in the work that you saw, that is, a little shaft?

A. Yes, I think it was more than a cut.

Q. It was a cut with a shaft?

A. Different times I was up there, I noted that it was larger than it was at some previous time that I had seen it, but this particular time, I don't know whether it was at its full capacity or not.

Q. And he told you that he had had that done?

A. Yes, sir.

Q. Did he tell you what work it was?

A. No, he didn't say. I don't think that he said what it was.

Q. Did he tell you it was his assessment work?

A. I don't remember his saying that.

Q. Didn't you inquire?

A. I don't think he stated, and I don't think I inquired.

Q. Why, you were there—

Mr. METSON.—I object to the why.

(Testimony of W. J. Harris.)

A. I can tell the motive for going up there, and what we were looking for. I was looking for the preliminary work of that claim.

Q. You thought if he had not done the preliminary work, but had done his assessment work, and that was not done within the ninety days, that you had a right—

The COURT.—The supposition is objectionable, as calling for a conclusion the point is what was there?

Q. He didn't tell you whether it was assessment work or location work?

A. No, sir; not that I can recollect.

Q. And you didn't ask him?

A. I don't think that I did.

Q. And that work was where, with reference to the present North Star shaft?

A. Thirty or thirty-five feet north and east, I should judge, a little up the hill; it was up above the shaft.

Q. When you say above, you mean up the hill?

A. Yes, sir; and a little to the north too.

Q. Then where did he take you?

A. To his location monument.

Q. Just on the mountain there?

A. On the ridge.

Q. As soon as you got up on the ridge, didn't he bring you right to the stake?

A. The next objective point was his stake, where we stopped again.

(Testimony of W. J. Harris.)

Q. The stake that he took you to was what direction from this work, from this cut?

A. It was north and east. I think we had to kind of go up, right in a B line for it; could not travel very well there, because those rocks slide, and it is very steep going up near the tunnel line, then on the ridge up, would bring us to that post.

Q. How far from that cut was it to the stake that he took you to?

A. Well, I really did not look at it for any purpose.

Q. Well, your best judgment and recollection; as you were traveling that night, how far do you think that you traveled from that cut to the stake that he took you to?

A. We didn't go in a direct line; went onto the ridge and then up the ridge.

Q. I didn't mean to ask how far you traveled; I mean how far was the stake that he took you to from this cut?

The COURT.—Your best recollection and judgment, approximately.

A. Really, I never thought of it as to the distance, and I don't know that I could state.

Q. Wasn't it about 300 feet?

A. Yes, I would think it was more than that.

Q. Would you swear positively it was more than 300 feet?

(Testimony of W. J. Harris.)

A. Very apt to be five or six hundred feet; it seems to me it is a long distance, I would not say.

Q. What I want to get at it, standing there that night in the twilight, after he had taken you to that stake, and looking down to the cut, how far did it seem to you?

A. I don't think I looked down to the cut again after going to this post; I don't think that I could see it; I doubt whether I could see it at all.

Q. You could not see this cut from the location post?

A. I doubt whether I could; I don't know whether it is a physical possibility or not; as a matter of fact, I am satisfied I didn't look back.

Q. Don't you think that Lewis could have taken you to a post about 300 feet from that work that night in a northerly direction from that cut; I am speaking about that particular night, not with reference to recollections formed from other trips you have made since then, but just recollecting what you did that particular night; don't you think Lewis could have taken you to a post about 300 feet northerly from that work there that he told you was the work that he had done?

A. It is the same post that I have seen frequently since, and it was the only post that I ever saw.

Q. What I mean is this: May not that post have been, when you saw it that night, at a point 300 feet north of that cut?

A. I don't think it could be; it was upon the ridge.

Q. I am speaking about that night. Is it not pos-

(Testimony of W. J. Harris.)

sible that that post could have been at a point 300 feet north of this cut when you saw it that night, and it was pointed out to you by Lewis?

A. No, it could not have been.

Q. Why not?

A. I will state at the time we got back to town, we spent a great deal of time on the other side looking around for this excavation I was looking for.

Q. Which excavation?

A. I was looking for something purporting to be the preliminary work, and I could not find any.

Q. Preliminary work of what?

A. Dave Lewis Hope claim.

Q. That is what you went up there for, to look for preliminary work and the excavation? A. Yes.

Q. And you went by that cut that he pointed out to you, and told you that he did, and you didn't ask him whether it was preliminary work or not; do you mean to go before this Court with such a statement as that?

A. That I didn't ask him what it was.

Q. You have testified that you went up there and didn't ask him whether it was preliminary work or assessment work?

A. We stopped there quite a little while, I should judge maybe five minutes, or more; stopped there discussing it, and he said he did it, and I asked him when he did it.

Q. If you were there looking for preliminary work

(Testimony of W. J. Harris.)

that Lewis had done, why didn't you ask him whether that was his preliminary work or not?

A. If I had asked him whether it was his preliminary work or not, the chances are he would not have known what I was getting at, anyhow.

Mr. METSON.—We object to the why, because that has been asked, and ruled out.

The COURT.—I think you are rather inclined to draw out some views of the witness, instead of getting at the actual fact of what was done. The Court will be liberal, but I would avoid that.

A. Mr. Goodwin, I was trying to determine in my own mind whether Mr. Lewis had any rights on that hill or not.

Q. When he pointed the monument out, did he show you any notice of location? A. No, sir.

Q. Did you look for one? A. I did not.

Q. Did you ask him if there was one?

A. He said it was his location monument, and the name was on the post, "Dave Lewis Hope"; he says, "There is the location monument."

Q. Did you ask him if there was a notice of location there? A. No, sir; I don't think I did.

Q. You didn't inquire for one?

A. I don't think I did.

Q. And you didn't look for one? A. No, sir.

Q. And still you were there to ascertain whether or not he had any rights? A. Yes, sir.

(Testimony of W. J. Harris.)

Q. And you were there to ascertain whether he had done any development work, and were along by this cut and didn't ask what it was?

A. I went there for the purpose of seeing if he had done any work, and I found, according to his own statement, that he had done this work, and I ascertained when it was done, the 1st day of February, 1902, and I wanted to determine whether he had done any other work, and I didn't find any.

Q. And then you concluded that he had no rights there on the hill? A. In my own mind, yes, sir.

Q. Wasn't Mr. Lewis much older than sixty years, was he not seventy?

A. A man out in the hills a great deal shows his age more than a man who is groomed, you might say, and he was fully, I should judge, that he was fully sixty, but I never had any means of determining.

Q. After he took you up there, how long was it before you were up there again; that is, from the first time that you have testified that he took you up there, how long was it before you were back there again?

A. I could not say; I was over that tunnel line a number of times; and after we commenced operations I was up there frequently of a Sunday; that is, I would walk up maybe early in the morning.

Q. What I mean is this: When did you next see that stake that you say he pointed out to you the first time he took you up; how long before you next saw it?

A. I could not say; I saw it a number of times in go-

(Testimony of W. J. Harris.)

ing over to the tunnel, looking up, and taking people, looking at the country generally, we could walk up over the Mizpah, and around there, and walk up the mountain to get a view, but I could not say.

Q. Were you ever at that stake to examine it from the time that he took you up there that Sunday evening, until now? A. Yes, sir.

Q. When was that time?

A. Well, I could not fix the date outside of one particular occasion, and that was some time in January, 1903; Mr. Salsberry, and I think perhaps Mr. Ish was up there; that is the only date that comes into my mind, but I know that I was there between the time I first saw it.

Q. You were not there for months after you first saw it, that stake, until you were there the second time, were you?

A. I think likely that I was; I was over that country very frequently.

Q. No; I mean to go up to that stake, look at it and examine it, and see that it was the same stake, in the same position as when you first saw it?

A. Well, I don't know as I had any particular occasion to; I saw the attachment notice on that stake, sometime either at this or a subsequent time, I could not say.

Q. Either at this or a subsequent time?

A. Yes, sir.

Q. When you went up there with Mr. Lewis, your

(Testimony of W. J. Harris.)

principal object was to see whether or not he had done his preliminary work, was it not?

A. I understood when he had done this work, showing it was clearly out of the ninety day limit, then I wanted to know if he did any other work that wasn't visible there, to see whether he had complied with the law, and owned the claim.

Q. How did you know that this work was not within the ninety day limit unless you examined the notice and knew what the date of the notice was.

A. Well, my associates in the ground had told me the exact date of this.

Q. From the record? A. Yes, sir.

Q. Did you make that examination with a view of invalidating the Ivanpah, that is, with a view of acquiring the Ivanpah, provided you determined that the preliminary work had not been done within the ninety days?

A. We had in mind taking the Ivanpah, but whether that was the prime motive at that time, I think it was mostly that; I wanted to be certain in my own mind, whether Lewis' statements that he had a claim up there in conflict with the tunnel line, or with our ground, as we termed it, whether he had any rights there; I wanted to satisfy my own mind.

Q. Thinking it over, don't you think it was with a view of resolving the doubt between the Ivanpah and that location, as to which was the better location to the ground? A. No, sir.

(Testimony of W. J. Harris.)

Q. Subsequently, you investigated with that object in view, did you not?

A. As to which claims we would take?

Q. Yes.

A. Oh, no; we never recognized the Dave Lewis Hope claim at all.

Q. You never recognized that at all?

A. No, sir, not in the least.

Q. You never made any arrangement with Mr. Davis by which he would take it over?

A. No, sir; I never did.

Q. Did the company?

A. I don't know that the company did. I never made any arrangement; never had any business talk with Mr. Lewis at all, outside of going up over this ground.

Q. Don't you, as an officer of this corporation, know at that time some arrangement was made by which the company would acquire the Dave Lewis title through Mr. Davis?

A. At a later time I saw and had among the papers a conveyance from Lewis of all his rights to Mr. Davis, and Mr. Davis to the corporation.

Q. As a matter of fact, wasn't that conveyance from Lewis to Davis fifteen days prior to any conveyance that was made by Mr. Ish to the company, of the Ivanpah?

A. That I could not say; the records will be the best evidence as to that; I could not say.

Q. Well, as a matter of fact, and as an officer of the corporation, don't you know that arrangement was made

(Testimony of W. J. Harris.)

with Mr. Lewis, prior to the time the company purchased the Ish title?

A. I will state right here, Mr. Goodwin, that no arrangement was ever made by a meeting of the board or private conversations taking over the title of Lewis; it was never recognized by any member of our company; and I testify that we have such a conveyance because it is the fact, and it was given to me by our attorney.

Mr. METSON.—I think this is all objectionable; if it were true that they did buy it, it cuts no figure,

The COURT.—Perhaps not, but I will admit it for whatever it is worth. Many things have an indirect bearing, and it is impossible to shift them out.

Q. Now, what was paid for that?

A. That I could not say.

Q. Don't you know that a certain sum of money and a certain number of shares in the North Star Company were given to Lewis for that conveyance?

A. I never had any business with Mr. Lewis, outside of going over that ground.

Q. I am not asking about the business; I am asking if you don't know, of your own knowledge, that a certain number of shares of the North Star stock, together with a certain sum of money, was delivered to Lewis for that conveyance that he made to Davis in the interests of the North Star Company?

A. I will state this; that I do not know, that is, I know by being told.

(Testimony of W. J. Harris.)

The COURT.—Not what you were told, but what you know. I suppose it is immaterial if they have got that whether they paid any money for it or not.

A. I will state this, Mr. Goodwin, if this is what you want; that is, that whatever was given to Mr. Lewis was not for his title; we never considered that he had any title; whatever was given to Mr. Lewis was given out of pure good will and charity.

Q. Let us get at the extent of this charity, and then I will leave the question. What was the number of shares you gave him?

Mr. METSON.—I object to that. Objection overruled.

Q. What number of shares of stock were given to him?

A. From my own actual knowledge, I don't know of a share being given him.

Q. Five thousand?

Mr. METSON.—I object to that because the witness has answered he didn't know.

Q. Were you the secretary of the corporation?

A. Yes.

Q. Don't you know what stock stood in his name?

A. Not a share.

Q. Do you know what stock was endorsed and delivered to him?

A. Of my own knowledge, I never saw the transaction, and don't know a thing about it. I will state this,

(Testimony of W. J. Harris.)

it is not my desire to evade or hide anything; if I am permitted to say what I believe.

The COURT.—I don't want what the witness believes or hears; I want to know what he knows.

A. I don't know anything about it.

Q. I think you stated that you never saw or heard of a notice similar to this. (Referring to paper in his hand.)

A. No, sir.

Q. Didn't you say that you heard that the president had received one by mail, or something of that sort?

A. I heard that there was some letters received, either from a Mr. Jury or Porter, in some way protesting against our operations there, or something of that sort; and I never saw any, or never received any.

Q. It was never brought to the files of the company?

A. No, sir.

Q. Don't you know that was just about the time you started in to work there?

A. It might have been, but I never paid any attention to it; it might have been.

Q. Now, this post that Mr. Lewis took you to see in a mound of rock in the size that you have described.

A. I don't think there was much of a monument there; it was a 4 by 4 post.

Q. You are sure that it was a 4 by 4 post?

A. Yes.

Q. Now, wasn't it split?

(Testimony of W. J. Harris.)

A. I could not swear as to that; not that I can remember; it might have been.

Q. Mr. Ish stated that his recollection was that it was a split piece of timber.

Mr. METSON.—We want the recollection of this witness.

A. I didn't pay much attention to it, outside of seeing the name "Dave Lewis Hope," and he said that was his location monument.

(By Mr. PITTMAN.)

Q. Just one question: You have stated that this stake, around which there was no monument, and near the trail, down near the upper lease of the Mizpah, was on the left-hand side of the trail; do you mean going up or coming down? A. Going up.

Mr. R. B. DAVIS, called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. PITTMAN.

Q. Your name is R. B. Davis? A. Yes, sir,

Q. How long have you been in the State of Nevada?

A. About twenty-six years, a little over—1878.

Q. Where have you resided since you have been in the State of Nevada?

A. My first place of residence was Sutro; next place was Dayton; next place was Silver Star, Esmeralda County; the next place was Tonopah.

Q. When did you first go to Tonopah?

(Testimony of R. B. Davis.)

A. My first trip to Tonopah, I landed there December 24th, 1900.

Q. Were you engaged in business in Tonopah at any time?

A. Yes, sir; from that time on to the present day.

Q. What business were you engaged in?

A. General merchandizing.

Q. Did you have a partner in business with you?

A. I did.

Q. Who was your partner? A. J. D. Lothrop.

Q. What was the name of the firm?

A. Lothrop & Davis.

Q. Were you acquainted with Dave Lewis in Tonopah, Nevada?

A. I was; yes, sir; I became acquainted with him in Tonopah.

Q. When did you first become acquainted with Dave Lewis? A. Why, it was in the summer of 1901.

Q. Did you ever have any business relations with Dave Lewis? A. Yes, sir.

Q. What were those relations?

A. Well, he had dealt some in the store there prior to my going to Tonopah to reside; you see I didn't reside in Tonopah regularly until July of 1901; I had business there in charge of another person; some time after I went there to reside permanently, in July, soon after the fourth, I don't remember just the exact date; somewhere between the 4th and 10th, I should judge; and it was

(Testimony of R. B. Davis.)

some time after that, in the summer, that I first got acquainted with Dave Lewis.

Q. When you got acquainted with him, did you have any business dealings with him? A. I did, yes, sir.

Q. What kind of dealings were they?

A. The first important business that I recollect was some time in the early fall; he came to the store, and he had a sack of money, and he wanted me to keep it for him, so I placed the money in the safe for him, with a tag on it; and that is about the first.

Q. How did he get that money?

A. Well, he would draw on me for money at any time that he wanted it, in small amounts; generally most of the amounts was quite small, a dollars, sometimes four bits, or a dollars and a half.

Q. Did he draw all that money out?

A. Yes, sir.

Q. Was that money left in the sack until it was all drawn out in that way?

A. No. It went on that way for several months, and at the end of each month we squared up with the store account; when he would draw four bits or a dollar, or whatever it would be, I didn't take the trouble to go into the sack; I would give it to him out of the till, and make a note of it, and at the end of the month, whatever the amount was that he drew in money, and whatever goods that he got, we would square up with the sack; take it out of the sack, and leave the sack in there; it went that way for several months, and finally

(Testimony of R. B. Davis.)

I told the bookkeeper the chances are that he would draw it all out that way, and we would just take the money out of the sack and give him credit for what was left; I think there was then about \$160 in the sack that he was given credit for.

Q. Do you know about what date that was?

A. Yes, I believe it was in along in December or January, somewhere along there; that is, December of 1901 or January of 1902, somewhere along there; I would not be certain about the date of that.

Q. Now, Mr. Davis, you have heard the testimony of Mr. Harris relative to a trip that you and Mr. Harris and Mr. Lewis took upon Mount Oddie some time in the spring or summer of 1902? A. Yes, sir.

Q. To look over a claim known as the Dave Lewis Hope Claim? A. Yes, sir.

Q. Now, state to the Court the substance of that trip?

A. Well, I went up on that trip expressly in Dave Lewis's interest.

Mr. GOODWIN.—We object to these self-serving declarations in Lewis's interest.

A. Well, I expected to be called down. Of course I want to state the facts in the case, and whenever I don't do that properly, of course call me down. We made an appointment to go over this ground, and as I said, my purpose was to advise Dave Lewis as to what he had in regard to it; and we made an appointment

(Testimony of R. B. Davis.)

and went up there; Harris was on hand but we didn't see Dave; we kind of looked up on the hill and saw somebody up there which we took to be Dave Lewis, up on Mount Oddie, so we went up there and found it was Dave Lewis; I think we found him along near where the North Star shaft is now, as near as I can tell, and I wanted him to show me where he done the work on the claim because I was told that the claim had run out.

Mr. GOODWIN.—Never mind what you were told.

A. He showed me this cut there, that McClure and Enright done.

Mr. GOODWIN.—The same objection, as to the declaration.

The COURT.—That goes all through the record, whether it is repeated or not.

Mr. GOODWIN.—With that understanding, we will make no further objection.

A. Well, he says, "There is some work I had done," he says, "You paid for it yourself," and I asked him when he had that done, and he said he didn't know for sure, but, he says "I have got the time-book in my cabin, and I can tell exactly the date." I was well aware of the fact, and I understood—

Mr. GOODWIN.—Never mind what you were aware of, or what you understood, just confine yourself to the facts.

Q. Then where did you go?

(Testimony of R. B. Davis.)

A. Well, knowing that this work was done along about the first of February, I asked him where he did his location work; "Well," he said, "I did some over here." We went up from there to where the location monument was, that was up a little bit over the ridge, kind of in a—well, I would say northerly direction from there, just a little bit over the ridge, and there was a monument there built of stone, I believe, and rock of some kind, to the best of my recollection there was a stake in it of some kind; I don't know what the dimensions of it were, or anything about it; that was his location monument, and I could not say positively whether we looked at the location notice or not, but anyway, he gave us to understand, and I think more than likely that we examined the location notice, I would not be positive about that; and he was very slow in getting around and we would have to continually keep reminding him that we wanted to see where he did this work; he said he would show us after a while, and we went around the hill on the other side.

Q. Which side; on the side towards town or the opposite side towards town?

A. First we went kind of north, right angles with town, and then around the hill to the east almost from where this—behind the hog back, and he showed us; it was in a kind of little ravine there, I recollect that very distinctly; he says here, "I did some work here." Well, it was really laughable to see that he would claim any work done; it seemed like a little mound was

(Testimony of R. B. Davis.)

scratched up through rocks and dirt, and there was a little stake driven in it, I don't think there was anything marked in it at all, and he could not show us any more work than that, and from that we went on down to his cabin, and he produced his time-book where he had kept the time of McCune and Enright in doing this work.

Q. What became of that book?

A. That book, Mr. Harris suggested that I take that book and keep it, and Mr. Lewis didn't object, and I took the book and put it in our safe.

Q. When did you take the book?

A. I took the book the same day we were up looking at this claim; I took the book, I had the book in my possession for some little time after that, and Mr. Harris and myself both examined the book, and Mr. Harris suggested that I take that and keep it, and I did, put it in the safe. I remember looking at it afterwards, and I believe I showed it, if I ain't mistaken, showed it to Mr. Pittman, but I would not be positive about that, but what became of the book I don't know.

Q. Have you tried to find the book?

A. Yes, sir, not only looked for it myself, but I had Stuart, the bookkeeper go through the safe, and I inquired of him about it, and he told me that it was in some of Dave Lewis's effects, his clothes, but I was positive that it was not in his clothes, because I had gotten it from him.

(Testimony of R. B. Davis.)

Q. What date did this time-book show that these men had worked there?

A. It was along about the first, I would not say it was the 1st, 2d, or 3d, but anyway, it was between the 30th of January and the 7th of February, 1902; I am positive about that.

Q. That showed what men worked there?

A. McCune and Enright.

Court adjourned until July 15th, 1904, at 10 A. M.

Court convened. July 15th, 10 o'clock A. M.

Direct Examination of Mr. R. B. DAVIS (Resumed).

Q. Mr. Davis, I am passing you four books, apparently account books, and I will ask you what those books are?

A. They are the day-books used in the store.

Q. What store?

A. The store of Lothrop & Davis.

Q. During what period of time?

A. This one was from August 9th to September 17th, 1901; this was from December 26th, 1901, to February 28th, 1902.

Q. Were those the books of original entry in your store? A. Yes, sir.

Q. I would like for you to turn in this book, upon the back of which is marked "December 28th, 1901, to February 28th, 1902," to the accounts for the month of February, the entries the first part of February.

(Testimony of R. B. Davis.)

Mr. GOODWIN.—We do not know the purpose of this, your Honor, but we object to the testimony of any entry made in these books unless the testimony shows they were entries made in the presence of some of the plaintiffs in this action. Mr. Davis is not a party to this action. This action is not upon any account or transaction between Mr. Davis and any of the plaintiffs in this action, and his original book of entry, as between the plaintiffs and defendant here, it seems to me is entirely incompetent.

The COURT.—Some matters have been testified to, and some occurrences have been testified to, and as to fixing the date, I think they would be admissible. I suppose it would be competent in order to fix some dates in supplying materials. We have your exception noted, and if the testimony should disclose anything outside, it would have come in under that exception; but I can see for that purpose it would be admissible.

(Plaintiffs except.)

A. That is the account of February.

Q. Now, commencing February 2d, see if there is any account of Dave Lewis?

A. I find on February 2d where there was a charge made to Dave Lewis.

Mr. GOODWIN.—The same objection.

The COURT.—Of course that objection goes to all the testimony in regard to this.

A. “Dave Lewis by McCune, 2½ pounds of powder,

(Testimony of R. B. Davis.)

forty cents; half box caps," it says half caps, it means half box, price thirty-five cents; "150 feet of fuse, forty cents."

Q. On February 2d?

A. On February 2d, 1902.

Mr. GOODWIN.—Now, if your Honor please, the subject-matter of the proposed testimony appearing, I move the Court to strike it out for the reason, that is is no evidence as between the plaintiffs in this action and the defendant; it is no evidence that at that time those articles were sold to Mr. Lewis by Mr. McCune, or through Mr. McCune, or at any other particular time. I can see that in an action as between Dave Lewis and Mr. Davis, he testifying that they were his original books of entry, then the law would step in, and being regularly kept, prima facie they would be evidence of the date, but as between these parties, and as evidence in this case, it seems to me it is entirely irrelevant and immaterial.

The COURT.—I am going to allow it in so far as it applies there, subject to your objection.

Mr. GOODWIN.—As I understand it, Mr. Pittman, this is for the purpose of corroborating the statement of Mr. McCune that the work he did there was about the first of February, is that it?

Mr. PITTMAN.—That is it.

Mr. GOODWIN.—This being a record of the 2d of

(Testimony of R. B. Davis.)

February, you offer that as corroborative of his testimony that he did it there the 1st?

Mr. PITTMAN.—I offer it as corroborative, and as I remember Mr. McCune's testimony, he bought the powder at Mr. Davis's store.

The COURT.—I will admit it. Plaintiffs except.

Q. Following along there, is there any other entry to Dave Lewis?

A. I find on the 6th of February there is charged, "Dave Lewis, to cash \$40," that is on February 6th, 1902.

Q. Now, I will ask you, Mr. Davis, if you know what particular cash that was that is charged to Lewis at that time?

A. My recollections are that it was to pay for the work done by McCune and Enright on this claim.

Q. I wish you would take the book marked "August 7th, 1901, to September 12th, 1901," and turn to the entries in that book from, say about the middle of August, along to the middle of September?

A. It will take some little time to go over that.

The COURT.—You might call attention to certain dates, it would be a matter of form.

Q. Between August 15th and September 15th, is there any charge to Charles J. Carr for any lumber in the Lothrop & Davis store?

A. I believe not; I have not seen any here; I started at August 26th and went to September 7th, and saw no

(Testimony of R. B. Davis.)

lumber charged to him; I will have to look over that, so I could swear positively and it would take some little time.

Q. You have examined from August 26th to September 7th? A. Yes, sir.

Q. And there are no charges against Charles J. Carr during that time? A. No.

Q. Mr. Davis, do you know whether or not in the month of August and September, 1901, your firm carried any lumber of dimensions 3 by 4?

A. I don't know of us ever carrying lumber that size.

Q. Do you know Charles J. Carr? A. Yes, sir.

Q. When did you first know of Mr. Carr?

A. The first that I knew Mr. Carr was about Christmas, 1900, I think it was on Christmas day, or the day following.

Q. Do you know Mr. Carr's general reputation in that community where he then lived for truth, honesty and integrity; you can answer that by yes or no?

A. I do.

Q. What was his reputation? A. Bad.

Cross-examination.

Q. You had a good deal of dealings with Mr. Carr?

A. Quite a little, yes.

Q. To what extent?

A. Well, in the first place we had dealings with the lease by Carr and Leidy, I believe it was called, and

(Testimony of R. B. Davis.)

then afterwards we had some dealings with Mr. Carr, private, after they had sold out of the lease.

Q. Did Mr. Carr pay you what he owed you?

A. Not all of it.

Q. Does Mr. Carr owe you anything to-day?

A. I believe he does; I think there is an account of about ten dollars.

Q. You think there is? A. Yes, sir.

Q. When did you present it?

A. Well, I could not say just when it was presented; there has been nothing said about it for the—the last time I ever recollect of mentioning it was after the amount of that attachment was paid; Mr. Carr spoke to me one day on the street; it seemed that there had been ten dollars that was overlooked in that attachment, wasn't put in, and whether it was my partner or someone else, I don't know, but I suppose some one had told Carr about it, but he called my attention to it; he says "There is ten dollars that is still owing you," he says, "I have not got the money now, but I will pay it to you."

Q. Mr. Carr called your attention to the fact that there was ten dollars omitted from the settlement?

A. Yes, sir; that is the first I knew of it.

Q. And he told you the first time he got the money he would pay you?

A. He said something to that effect.

Q. Did he dispute the bill in any way?

A. No, I wasn't presenting him with any bill at all.

(Testimony of R. B. Davis.)

Q. You and your partner had a settlement with Mr. Carr in which he paid you a sum of money which was accepted by you in full settlement up to that time?

A. I believe it was; I didn't attend to that part, I left it to my partner.

Q. As a member of that partnership, you know there was a settlement between your partnership and Mr. Carr, settling all matters up to a certain time, was there not? A. I believe there was a—

Q. Just answer the question please? A. Yes.

Q. That is a fact?

A. That is a fact as I understand it.

Q. After your settlement, and after he had your receipt in full for all demands up to date, he stated to you that ten dollars had been left out, had not been included, did he?

A. He spoke to me in a way that—he says, "That ten dollars, I will fix that some time, I have not got the money now, I will fix that some time."

Q. That was ten dollars that by mistake had been left out of this settlement, was it?

A. I believe so, that is the way I understood it.

Q. And Mr. Carr himself brought that to your attention? A. Yes, sir.

Q. Did you consider that honorable or dishonorable in Mr. Carr?

A. Oh, I didn't think much about it.

Q. Well is that one of the circumstances on which

(Testimony of R. B. Davis.)

you base your opinion of Mr. Carr, that his reputation is bad? A. No, sir.

Q. That is not one of them? A. No, sir.

Q. Will you examine that paper and state whether or not you know anything about it. (Hands paper to witness.) Is that signed your partnership name by your partners? A. Yes, sir.

Mr. GOODWIN.—If your Honor please, may we have an inspection of those books of the items from August 9th to September 12th?

The COURT.—Yes.

Mr. GOODWIN.—We now offer in evidence the following receipt:

Complainants' Exhibit No. 13.

§385.00. Tonopah, Nevada, May 21st, 1902.

Recd. from Charlie J. Carr the sum of \$355.99/100 settlement in full for account due for merchandise to date, and the further sum of thirty dollars receipt in full for cost in cases where C. J. Carr and Ott and Carr and Lyons were defendants and Lothrop & Davis were plaintiffs.

LOTHROP & DAVIS,

By J. D. LOTHROP.

(Receipt admitted and marked Complainants' Exhibit No. 13.)

(Testimony of R. B. Davis.)

Q. Mr. Carr dealt with you during the period of time he was there in Tonopah?

A. Yes, sir; he dealt considerable there.

Q. He owed you as high as what sum at any one time, the highest amount?

A. I guess that sum there is about as high as he owed, I don't know, I don't recollect of it being any higher than that, unless it was during the leasing time, and that was an account of Carr and Leidy.

Q. Did Mr. Carr ever come to you when he was sober, and you refuse him credit? A. Yes, sir.

Q. When was that?

A. Well, I could not tell the date, but it was along pretty well in the fall.

Q. Of what year? A. 1901.

Q. Did you get a lot from Mr. Carr in the town?

A. When I first went there—

Q. Just answer the question, Mr. Davis?

A. Well, I cannot say that I did, no.

Q. Don't you know that when you went there Mr. Carr gave you a lot, or two or three of them?

A. He sold—

Q. Just state yes or no?

A. Well, in saying that he gave me a lot, he showed me where I could build on.

Q. Didn't he show you where you could build on what he claimed to be his part of the townsite?

A. Yes, he did.

(Testimony of R. B. Davis.)

Q. And didn't he measure out two or three lots which you occupied and went on?

A. No, sir.

Q. How many? A. One.

Q. What was the size of it?

A. It was already staked out.

Q. Who had it staked out?

A. Well, I understood it was Gayhart.

Q. Didn't you understand that Mr. Carr—

A. I thought at the time that Carr and Leidy, it was on their ground, I was told it was on their ground.

Q. Well, you know it was on their ground at that time, don't you? A. No, sir.

Q. Don't you know now that that lot was on their ground at that time? A. No, sir.

Q. It was not?

A. I don't think it was on their ground.

Q. You don't think it was on their ground?

A. No, sir.

Q. Didn't they own that claim at that time?

A. They owned their claim back there, but I don't think that that lot was on their ground; I thought so at the time when I took to building there.

Q. Mr. Carr thought so at the time, didn't he?

A. Well, I think probably he did; I guess he did.

Q. And Mr. Carr gave you that lot?

A. Carr and Leidy both told me I could go ahead and build there, and afterwards I paid the location price for the lot.

(Testimony of R. B. Davis.)

Q. To whom?

A. Why, I don't know who did collect for the lots there, but I know the price of it was ten dollars; that was simply to pay for surveying.

Q. Don't you know that you got that lot from Carr and Leidy for simply what it cost them to have it surveyed and staked out?

A. No, sir; I don't know that they had it surveyed and staked out.

Q. You say it was staked out when you went there?

A. Yes.

Q. And you got it from Carr and Leidy?

A. I got the permission there from them.

Q. And you went into possession under their permission? A. Yes, sir.

Q. And built under their permission? A. Yes.

Q. And all you ever paid for that lot was ten dollars, which you understood was the cost of staking it out and surveying it? A. Yes, sir.

Q. What is that lot worth to-day?

A. Well, I don't know what it is worth.

Q. It is worth considerable money, is it not?

A. Yes, sir.

Q. Would you take a thousand dollars for it?

A. No, sir, I would not.

Q. Would you take five thousand dollars for it?

A. The lot and improvements, or the lot alone?

Q. The lot alone?

(Testimony of R. B. Davis.)

A. Well, if there was no improvements on it, I guess I would, if it was mine; I don't own it at present myself.

Q. Is the fact that Mr. Carr let you in possession of the lot, and only charged you the actual cost for it, is that one of the facts on which you base your opinion, that his reputation for truth, honesty and integrity is not good?

A. No, sir.

Q. Besides this, don't you know of Mr. Carr giving away a good many lots at that time upon those same conditions?

A. I think he did, yes.

Q. You know he did, don't you?

A. I am quite positive.

Q. Don't you know as far as building up the town and giving away lots, and helping to boost the camp, that Mr. Carr was liberal, and more than liberal?

A. He seemed to be quite liberal.

Q. In fact, he was much more liberal than anybody that you have seen there since, wasn't he?

A. No, sir.

Q. Have you known of many lots being given away there for ten dollars apiece, since Mr. Carr gave them away?

A. Yes, sir; any of the lots could be had at that price at that time.

Q. From whom?

A. From whoever owned the ground there; from the Butler Company, they let them build there about the same way.

(Testimony of R. B. Davis.)

Q. Now when was it that you and Lewis and Carr and Harris went up there on Mount Oddie?

A. Well, I could not tell what date, but it was pretty well along in the spring of 1902, I would say April or May, probably along there somewheres, I don't recollect exactly.

Q. As I understand you, you and Mr. Harris left the town together? A. Yes, sir.

Q. In the evening?

A. My recollection of it as that it was in the morning.

Q. Your recollection of it was that it was in the morning? A. Yes, sir.

Q. And you saw Lewis up near where the North Star shaft now is? A. Yes, up on that hill.

Q. And you went right up to him at that point?

A. Yes.

Q. In other words, he waited there for you to come up, is that the fact? A. Yes, sir.

Q. Then you met him at that cut, did you?

A. Met him up there in that neighborhood somewhere.

Q. Now describe the cut at that time, as you recollect it?

A. Well, to the best of my recollection it was just a cut run into the hill.

Q. And wasn't there a little shaft, a little hole?

A. I don't think there was any shaft there at that time.

Q. Mr. Harris' description of it was a shaft some five or six feet deep?

(Testimony of R. B. Davis.)

A. I don't recollect of any shaft; I recollect a cut being there in the hill.

Q. Now what I want to find out if I can, is, whether you were up there with Mr. Lewis before or after Doctor Porter was there; it seems to be admitted that Doctor Porter went there, and in the bottom of this cut sunk a shaft some six or seven feet deep; he went there not earlier than the 24th of April, according to the testimony?

Mr. METSON.—I think that might confuse the witness; refresh his memory by something else.

The COURT.—What is your recollection of it, that is all that he wants to get, what you saw there.

A. My recollection is that it was a cut.

Q. Now, as I understood from your testimony, you went up there as a friend, adviser and representative of Lewis?

A. Yes, sir.

Q. In other words you were protecting his interests, looking out for his interests, as against conflicting interests, or claimed interests of Mr. Harris and his company?

A. I went up there for the purpose of ascertaining, if possible, whether he really had a valid claim there on the hill; he had been talking to me about a claim, the Dave Lewis Hope, for months; I had not paid very much attention to it, and had not ever been up there on the ground.

Q. For several months he had been telling you that he had a claim up there, the Dave Lewis Hope claim?

A. Yes.

Q. And you went up, knowing that Mr. Harris might

(Testimony of R. B. Davis.)

have some conflicting interests, you went up as the friend and adviser of Lewis, to look out for his interests in the matter, did you? A. Well, in a way; yes, sir.

Q. When you came to this cut, did you examine it?

A. Yes, sir.

Q. What was the size of it?

A. To the best of my recollection it was probably about three feet wide, and seven or eight feet, or probably more, in the bottom, and just run into the side of the hill.

Q. Seven or eight feet long? A. I think so.

Q. And how deep?

A. Six or seven feet probably, in the face, might be more, I would not say.

Q. Did you ask Lewis what that work was?

A. Yes, sir.

Q. What did he say?

A. He said: "That is the work that I had done," he said it was work that he had done, and he was speaking to Mr, Harris and I both, and he says, "You paid him for it, I got the money from you to pay him," something to that effect.

Q. Did he say anything with reference to its being his location or his assessment work?

A. Well, I don't recollect of him saying designating which it was, but he claimed that as work that he had done on the claim.

Q. He simply claimed it as work that he had done on the claim? A. Yes, sir.

(Testimony of R. B. Davis.)

Q. You were familiar with mining laws at that time?

A. I was to a certain extent; yes, sir.

Q. What was said there with reference to stakes or monuments there at the cut?

A. I cannot recollect whether there was anything said there or not.

Q. Right there, did Lewis represent to you that this work was on his claim?

A. I think he did; he supposed it was, yes.

Q. Did he point out to you any vein or ledge, or stringer, or anything of that sort?

A. There was kind of a black streak there, a kind of manganese, that is about all there was to it; a kind of a little black streak of something.

Q. He pointed out that little black streak to you as his ledge, didn't he?

A. Well, I don't recollect about that, I never seen a streak there.

Q. Didn't you ask him where his ledge was, or anything of that sort?

A. No, I don't know as I did.

Q. You don't know as you did?

A. No, sir.

Q. What was said then about stakes, if anything?

A. Well, I don't recollect just what was said; but I kept asking him where his monuments were, and where, if he had done any other work.

Q. What did he say?

A. He said, "They're up here," pointed up that way (indicating), and we went up then towards the location monument.

(Testimony of R. B. Davis.)

Q. When you left the cut, which way did you go?

A. We went towards the location monument up over the ridge.

Q. Now, Mr. Davis, didn't you and Mr. Harris go to a monument about 300 feet north of that cut that night?

A. I should judge it was about that far, maybe more, I would not say just how far it was.

Q. Don't you know that the monument to which he took you was north, and if not exactly north, a little west of north, about 300 feet from that cut?

A. To the best of my recollection, I would think it was a little east of north, but I would not be positive.

Q. You examined his notice of location, didn't you?

A. I would not say for certain about that; the chances are we did.

Q. Don't you know that he represented to you that that cut was practically in the middle of his claim?

A. No, I don't recollect that; I don't recollect of him claiming at all about that.

Q. You don't recollect of his claiming anything at all about that? A. No.

Q. Now from this monument and stake he took you to, you could see the cut down the hill, couldn't you?

A. Yes, we could see about where it was, I guess.

Q. Wasn't the cut that you saw there then a big plain cut from this monument that he took you to?

A. It was plainer from the lower side that it would be from over there.

(Testimony of R. B. Davis.)

Q. The monument that he took you to, couldn't you plainly see this cut down there below it about 300 feet?

Mr. METSON.—The witness said he could not designate the distance, it might be 300 feet, or more; counsel is assuming a certain state of facts in his cross-examination; they are not in the nature of quite fair questions; he may not intend that, and I do not think he does, but I do not think these things should be assumed.

A. I could not say anyway, I could not say whether it was 300 or more.

Q. After he took you to this monument, then what else was done or said?

A. Well, we kept asking him where his location work was done, and he said, "Down this way," pointing north.

Q. Pointing north?

A. Yes; he says, "We will get to that pretty soon," and so afterwards we went in a northerly direction down over the hog back some little distance and he seemed to be—could not find any work, and then we went off towards the east, around pretty well east, and he claimed there, "Here," he says, "I done some of it here." Of course there wasn't any work anything like location work, wasn't any work at all done there, any more than it looked like a little ground had been scratched up, and a stake in it.

Q. What did you say to him with reference to his location after you had examined the matter?

A. Well, I told him that if he done that work in Feb-

(Testimony of R. B. Davis.)

ruary, that I didn't think he had any valid claim there at all.

Q. And what did he say?

A. Well, he says "I have"; but I told him that I could not see how he could hold it, and advised him to take whatever those fellows saw fit to give him for his interests, his claim, whatever it is.

Q. Afterwards did you make a trade with him, and get a conveyance of that mining claim?

A. Yes, I believe I did.

Q. When was that? A. I could not tell.

Q. Was it the 15th day of June, 1902?

A. I could not say.

The COURT.—Have you the deed?

Mr. GOODWIN.—Yes. I don't know whether that deed is in evidence or not, your Honor. I think not. The deed is dated June 28th and acknowledged June 30th.

Q. (The COURT.) That is the instrument, I suppose?

A. Probably it is, I could not say as to the date, I didn't take any great interest in that; I simply was satisfied that Dave could not do anything any more than what they saw fit to give him for his good will.

Q. What did you give Lewis for that deed?

A. I don't recollect now.

Q. Well, give us your best recollection?

A. What did I give him for the deed?

(Testimony of R. B. Davis.)

Q. What did you pay him for that transfer?

A. Well, there was a stock transaction, and some cash.

Q. How much cash did you give him?

A. I think there was a hundred dollars.

Q. Have you entry of that in your cash-book?

A. I think not.

Q. Didn't you keep a cash-book at that time?

A. I didn't keep the books myself; that didn't go through these books, anyway; I don't think there is any account of that transaction on the books here at all.

Q. (The COURT.) Was the transaction between you and Lewis or was it between the firm of Lothrop and Davis?

A. The stock was turned over by Mr. Golden.

Q. And who was the cash turned over by?

A. Mr. Golden also, I believe.

Q. Now, what was the amount of cash?

A. A hundred dollars.

Q. What was the number of shares of stock?

A. Five thousand shares.

Q. At that time what was the North Star stock selling at on the market?

A. I think the market price then was twenty-five cents; I don't recollect for certain.

Q. Previous to this deed, you had attached that mine too, as the property of Carr to secure an indebtedness that you claimed that he owed the firm, had you not?

A. Yes, sir.

(Testimony of R. B. Davis.)

Q. You say that you had in August and September, 1901, no 3 by 4, and that the firm never kept any?

A. I said I didn't think we had.

Q. Will you look at an item on page 159, at the top of the page, and state whether or not after examining that item, you can refresh your memory as to whether the firm carried any 3 by 4's?

A. I see there is a charge there of one piece of 3 by 4.

Q. Now using that to refresh your memory, what would you say with reference to the firm carrying that size lumber at that time?

A. I say we might have, or that might have been a mistake on there.

Mr. GOODWIN.—We would like a little more time to look through here and see if any more mistakes of that kind have been made.

Mr. METSON.—The book is at your disposal, and you can take it up this afternoon, we have no objection.

Redirect Examination.

Q. Mr. Davis, is Dave Lewis alive now?

A. No, sir.

Q. When did he die?

A. I cannot recollect the date of that; it seems to me nine or ten months ago. I don't recollect the date.

Q. Was it in the winter time, last winter?

A. It seems to me it was in the fall, or early winter.

(Testimony of R. B. Davis.)

Q. Do you know of Mr. Lewis' financial condition from the first of May, 1902, until the time of his death?

A. Yes, sir.

Q. What was his means of support during that period of time, if you know?

A. Well, he got everything for his support from us there in the store.

Q. Did he bring any money and deposit with you in the month of May, 1902?

A. Not that I recollect of.

Q. Was he indebted to your firm at the time of his death? A. Yes, sir.

Q. Could you approximate about the sum that he was indebted to your firm?

A. I could not say exactly.

Mr. GOODWIN.—I do not see the relevancy of this.

The COURT.—It is immaterial whether he was indebted to him or not so far as the issue in this case is concerned.

Mr. PITTMAN.—The object is to show his financial condition; and I wasn't to show that during his life Mr. Davis was looking after this man, and had the most intimate relations with him in his business.

The COURT.—It seems to be agreed upon by both sides.

Q. Do you know when the North Star Company was incorporated, when it came into existence?

(Testimony of R. B. Davis.)

A. No, sir, I do not.

Q. How long after you got this deed from Dave Lewis before you got any stock of the North Star Company?

A. I could not state that either.

Q. It was not at the same time you got the deed, was it, from Lewis?

A. I could not say that either.

Q. That deed was executed by Lewis to you, was it not?

A. I believe it was, yes.

Q. Just state to the Court the object in the execution of that deed to you, if there was any, whether you bought it, or claimed to own the property at any time, or the circumstances?

A. Whether I claimed to own it?

Q. Did you ever claim to own any interest in the Dave Lewis Hope claim yourself?

A. No, sir, I did not.

Q. Well, then, explain the circumstances why you took this deed?

A. Well, it was on account of—I understood that a former deed was made conveying from Lewis to Porter.

Mr. GOODWIN.—We object to his understanding.

The COURT.—The deed itself will show whether it was after or before.

A. Well, I know one thing, that Lewis kept telling me—

Mr. GOODWIN.—We object to what he kept telling you. His declarations in that particular certainly

(Testimony of R. B. Davis.)

would not be competent as against Mr. Porter, or his transfers.

Q. Well, did you claim to own that property that you got the deed from Dave Lewis? A. No, sir.

Q. Who did own it?

Mr. GOODWIN.—Now, I object.

Mr. PITTMAN.—My object, and it may not be considered material, is this: they have attempted here, the way the question was brought out by the attorney was, that Mr. Davis gave 5,000 shares of stock to Mr. Lewis.

Mr. GOODWIN.—A hundred dollars, and five thousand shares of stock, then valued at twenty-five cents a share, which would be \$1,350 for that conveyance.

The COURT.—What difference does it make whether it was one dollar or thirteen thousand. It is the principle. It is the principle that might reflect on the transaction, but it does not reach any issues.

Recross-examination.

Q. Do you recollect the sum of money that Dave Lewis deposited with you? A. At what time?

Q. You said that he came and brought a sack of money, and put in your safe?

A. I don't recollect the exact amount now. It seems to me it was five or six hundred dollars.

Q. About five hundred dollars, wasn't it?

A. About five or six hundred dollars; I would not say.

(Testimony of R. B. Davis.)

Q. Do you know where he got that money?

A. Got it from the sale of a lot.

Q. Do you know who gave him that lot?

A. I don't know anything about it.

Q. Don't you know that Mr. Carr gave him that lot, and Lewis sold it for \$500, and that is the \$500 that he brought and put in your safe?

A. I don't know anything about that.

Q. Didn't you hear that from Mr. Lewis?

A. No, sir.

Q. Didn't you know that at that time, that that is where Lewis got his lot from, Charlie Carr and his partner?

A. No, sir, I don't know how he got the lot. I knew where the lot was.

Q. It was on the Carr ground, wasn't it?

A. Well, I believe it was.

Mr. METSON.—There are two deeds we would like to offer in evidence that belong to the other side. If they wish we will have them withdrawn, and certified copies made. No objection.

(Deed from Davis R. Lewis and Charles J. Carr, by his attorney in fact David R. Lewis to Jerome P. Porter, dated May 15th, 1902, and filed May 19th, 1902, marked Defendant's Exhibit "C." Deed from D. R. Lewis to Jerome P. Porter, dated May 19th, 1902, filed May 24th, 1902, marked Defendants' Exhibit "D.")

Mr. L. O. RAY, recalled by defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. You knew Mr. Carr out there at Tonopah, did you? A. Yes, sir.

Q. Can you tell me whether you know the general reputation of Charles J. Carr in Tonopah for truth, honesty and integrity, in the community in which he lived at the time you were there, and knew him. Answer yes or no? A. Yes, sir.

Q. State whether it was good or bad. A. Bad.

Cross-examination.

Q. I think you stated you were interested in this suit? A. Only as a witness, sir.

Q. Only as a witness now? A. Yes, sir.

Q. You were very much interested in the North Star Development Company at one time, were you not?

A. Yes, sir.

Q. And have taken considerable interest in the prosecution of this trial, have you not? A. Yes, sir.

Q. And very anxious to see the defendant succeed, are you not? A. I am, sir.

Q. Decidedly so, are you not? A. Yes, sir.

Q. Do you believe Charlie Carr in his right mind, and not under the influence of liquor, would do any man on earth a wrong or injury? A. I don't know.

Q. You don't know? A. No, sir.

Q. Well, do you believe he would, as man to man, and honestly, do you believe that he would?

(Testimony of L. O. Ray.)

A. I know only what I have heard said.

Q. Answer my question if you can, Mr. Ray. Right down in your heart do you believe Charlie Carr, sober and in his right mind, would do any man on earth an injury?

Mr. METSON.—It is not what the witness believes.

The COURT.—I have allowed the testimony. The point is whether his reputation in the community in which he lives, for truth, honesty and integrity is good or bad; that is, the reputation, not what you think. If you can answer the question, you may.

A. If your Honor please, there is ties that bind men together, and those are ties that a great many of us right here are bound together with, and that I consider very important, and for that reason I wish to be very careful what I say.

The COURT.—As to your individual opinion?

A. Yes, sir.

The COURT.—I do not think your individual opinion would have anything to do with it. A witness is not giving his own views when he states the general reputation.

Mr. JAMES McQUILLAN, a witness called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. Where do you reside? A. Tonopah.

(Testimony of James McQuillan.)

Q. How long have you resided there?

A. Since January, 1901.

Q. Do you know one Charles J. Carr?

A. Yes, sir.

Q. Did you know him in February?

A. Yes, sir.

Q. What was your business in Tonopah?

A. Mining.

Q. Was he in Tonopah at the same time you were?

A. Before I was there.

Q. And remained after you went there, did he?

A. Yes, sir.

Q. State whether or not you know the general reputation of Charles J. Carr in the community in which he lived, to wit, Tonopah, where you knew him, for truth, honesty and integrity?

A. Well, I am sorry to say it was not very good.

Q. You did not know his reputation there, did you?

A. Yes, sir.

Q. State whether it was good or bad?

A. Well, it was bad.

Cross-examination.

Q. What interest have you in this suit?

A. None whatever.

Q. Are you associated with Mr. Golden or any of the parties to this proceeding?

A. I don't think I am associated with a gentleman in the crowd.

(Testimony of James McQuillan.)

Q. At whose request did you come here?

A. I was subpoenaed on the street this morning.

Q. Did you come from Tonopah to attend this trial?

A. No, sir.

Q. What have you heard said about Mr. Carr over in Tonopah?

A. I would rather you would not ask those questions. I don't wish to go into those details at all; it is not a very nice position to be placed in, and the less I have to say in regard to the matter the better I would like it. It is not a desirable position to be placed in, put here on the witness stand to cry down a man's character.

Q. No, it is not an enviable position, I will admit that, Mr. McQuillan. Now, will you answer my question please.

(Question read.)

A. I have heard said that Mr. Carr was not a desirable citizen.

Q. Was not a desirable citizen?

A. Was not a desirable citizen.

Q. By whom?

A. By a great many of the business men.

Q. Did they specify any particular reason for his not being a desirable citizen?

A. They did.

Q. What was it? A. Dishonorable.

Q. In what way? A. Well, in various ways.

(Testimony of James McQuillan.)

Q. Did you ever hear it claimed that he was a claim jumper?

A. No, I don't know as I have, I don't think I have.

Q. Did you ever hear it said that he attempted ever to claim any land in that neighborhood, that he didn't have the first notice on?

A. Yes, sir.

Q. Which claims?

A. Well, Mr. Carr has claimed ground that he had the first notice for, and disposed of it, and claimed it the second, third and fourth time.

Q. In what way, relative to town lots there?

A. In relation to town lots.

Q. Did you ever hear of a second or third deed that Mr. Carr ever made, or did you ever hear anybody claim that Mr. Carr made the second or third claim to these lots?

The COURT.—I do not think we ought to go into those particulars of it; it is the reputation of a man in the community, and not the individual knowledge. It is not to be expected that what a man hears that he is going to look for the deeds, or becoming an intermeddler to look it up. He only goes on what he hears, and what he actually knows. If you want to call it out, and he is willing to give it, all right.

Q. Is not all you ever heard about Mr. Carr was that he got drunk over there, and it is claimed that he disposed of town lots there to several different parties?

A. That is about right.

(Testimony of James McQuillan.)

Q. Is not that about all you ever heard about Mr. Carr?

A. I have had quite a little dealing with Mr. Carr.

Q. In what way?

A. In properties, of Tonopah mining ground, in the West End lode.

Q. In what way did you have dealings with him?

A. I was one of the parties that bought some ground from Mr. Carr out there.

Q. The West End? A. Yes.

Q. And what subsequently happened?

A. Well, we have had trouble. We haven't got our patent as yet.

Q. Was he in possession when you bought?

A. He was.

Q. Did he put you in possession? A. He did.

Q. Did he give you whatever title he had?

A. He did.

Q. Did he accept what he agreed to take for the property? A. He did.

Q. At the time did you know of any adverse claim to it? A. No, sir.

Q. Did he know of any adverse claim to it?

A. I don't believe he did.

Q. You don't believe he did. Then what was there dishonorable in that transaction?

A. Nothing dishonorable. I didn't say it was dishonorable. I simply said I had some dealings with Mr.

(Testimony of James McQuillan.)

Carr myself. I didn't say there was anything dishonorable about it. I simply stated that I had a great deal of dealings with Mr. Carr myself.

Q. And that you had a good deal of trouble?

A. Yes, we have had trouble in regard to our patent, adverse interests.

Q. Now, you have charged Mr. Carr up with that, haven't you, with all the trouble that you have had?

A. I have.

Q. Why?

A. Because he was the direct cause, I thought.

Q. In other words, if he had not been in possession, and had not delivered it to you, and had not sold you the property, and you had not bought it, you would not have had any trouble?

Mr. METSON.—I object to that on the ground it is argument.

(Objection sustained.)

(By Mr. METSON.)

Q. You were asked whether or not you had heard other things about Mr. Carr other than this question of property. Did you or did you not hear other things in that community respecting Mr. Carr?

A. Oh, yes; I heard a great deal.

Q. Will you please state them?

A. I cannot remember them.

(Plaintiffs object to the question. Objection sustained.)

Mr. J. T. DAVIS, called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. Mr. Davis, what is your business?

A. I am employed by the State Bank & Trust Company in this city.

Q. Did you ever live in Tonopah? A. Yes, sir.

Q. Did you know one Charles J. Carr?

A. I did not. I may have seen him, but I have no knowledge of him.

Q. He is the gentleman here. (Indicating.)

A. I cannot identify him; no, sir.

Q. Did you know of him out there?

A. I knew of a man called Charlie Carr in Tonopah, but I cannot identify this gentleman as he.

Q. Can you state the general reputation for truth, honesty and integrity in Tonopah of Mr. Carr?

Mr. GOODWIN.—We object as incompetent.

The COURT.—Well, he knows the name. We will take it for what it is worth in that connection.

Q. State whether it was good or bad for truth, honesty and integrity? A. It was bad.

(No cross-examination.)

Mr. WILSON BROUGHER, called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. Mr. Brougher, you lived in Tonopah at one time?

(Testimony of Wilson Brougher.)

A. Yes, sir.

Q. State what occupation you followed there, if any?

A. Mining.

Q. And do you fill any official position in this state at the present time? A. Yes, sir.

Q. Did you know one Charlie Carr or Charles J. Carr in Tonopah? A. Yes, sir.

Q. I am not going to ask you, Senator Brougher, as to what you individually know. I just want to know what you heard: Just state whether or not you know the general reputation of Charlie Carr, or Charles J. Carr, for truth, honesty and integrity, in Tonopah; yes or no?

A. Well, personally, I don't know, but report.

The COURT.—Q. Well, the general reputation in the community, did you know? A. Yes.

Q. State whether it was good or bad in the community, his general reputation?

A. Well, I understood it was bad.

Cross-Examination.

Q. What do you mean when you say you understood it was bad?

A. Well, from reports I have heard, and rumors; of course, I don't know personally.

The COURT.—It is not your personal knowledge.

A. It is just what I have heard.

Q. Have you heard his reputation discussed much until this suit was commenced?

(Testimony of Wilson Brougher.)

A. Well, I have not heard it lately; it was quite a while ago; reports that came from Tonopah by different ones, that is all I know about it.

Q. Haven't those reports and rumors been principally carried to you, or heard by you, from parties connected with this suit? A. No, sir.

Q. Mr. Golden and Mr. Ramsey?

A. No; I never heard them say anything.

Q. You never heard them say anything?

A. No.

Doctor A. L. HUDGENS, called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. Where do you reside, Doctor? A. Tonopah.

Q. How long have you resided in Tonopah?

A. About three years and a half.

Q. You were there in 1901 and 1902, were you?

A. Yes, sir; most of the time.

Q. Did you know Charles J. Carr, then?

A. I did.

Q. State, Doctor, whether or not you ever knew of any location monuments being erected along some time in 1902, marked Mizpah Intersection?

A. Yes, sir; I saw such monuments.

Q. And what monuments were they, if you please?

A. In the summer or the latter part of the spring of 1902, there were two new monuments that appeared on the Silver State claim; one about two or two hundred

(Testimony of Dr. A. L. Hudgens.)

and fifty feet northerly from the Desert Queen shaft, marked the "Southwest corner of the Mizpah Intersection"; this appeared some time after May the 4th, 1902; I don't know the date exactly, because I was in and out of Tonopah at the time a good deal; I had been east, and I don't remember whether it was there just before going east or afterwards; but at the time of the sale in May, they were not there. Then there was another about 600 feet from this one in an easterly direction, towards the line of the G. & H. tunnel; it was marked the "Southeast corner of the Mizpah Intersection"; I don't know who put them up, but I was told—

Mr. GOODWIN.—Never mind what you were told.

Q. I will ask you this question, Doctor: At the place these monuments were erected, had there been any monuments prior to May 4th, 1902? A. No, sir.

Q. I will ask you further, if you knew the general reputation for truth, honesty, and integrity of Charles J. Carr, in Tonopah, the community in which he lived; answer it yes, or no? A. Yes.

Q. State whether or not it was good or bad?

A. In the early history of the camp, I never heard anything to the contrary; later on, I did, general rumor.

Q. That is all we are asking about, the general reputation, not what you personally know; was it good or bad?

A. It was bad; good in the early part, and not so good in the latter part of his stay there.

A. Do you know Doctor Porter? A. I do.

(Testimony of Dr. A. L. Hudgens.)

Cross-Examination.

Q. What other marks were on those posts that you saw there, Doctor?

A. Would you like a kind of description of the post and monuments?

Q. Yes.

A. They consisted of rock monuments with a 4 by 4 post in the center, if I remember correctly; I think it was marked with a pencil "Southwest corner of the Mizpah Intersection."

Q. Anything else?

A. That is all that I noticed.

Q. Wasn't "Dave Lewis Hope" on them?

A. I don't remember seeing it; I didn't see it.

Q. Well, you had heard of the Dave Lewis Hope claim there before that time, hadn't you?

A. Yes, sir; I had heard of such a claim.

Q. And you knew approximately where it was located, did you not?

A. Well, I knew it was on the west slope of that hill, or claimed to be, I presume that is approximately.

Q. And you had heard that fact quite a while prior to that time? A. Yes, sir.

Q. And you understood at that time, didn't you, that it covered ground in there north and northwest of the Mizpah on the side of the mountain there somewhere?

A. Yes, sir.

Mr. METSON.—We object to his understanding.

(Testimony of Dr. A. L. Hudgens.)

The COURT.—What you know of your own knowledge, as to the lines, or location, or situation.

A. I don't know a thing as to where it was only what I had heard; and I had reasons for not knowing which I could detail if it was necessary.

The COURT.—I do not think it is necessary; just the fact.

Redirect Examination.

Q. Doctor, I am going to show you an exhibit that is marked here Complainants' Exhibit No. 3, and ask you if you can recognize the building in the right-hand corner? A. Yes, sir.

Q. What building is that?

A. That is the company house.

Q. What company?

A. Tonopah Nevada Company.

Q. Who lived there, if you know?

A. Mr. T. L. Oddie and Mr. Siebert.

Q. State, Doctor, with reference to that building, were these Mizpah Intersection stakes to the right or left of it?

A. Well, as I look at it, they were a little to the left of it.

Q. Do you know what claim that building was on?

Q. Do you know what claim that building is on?

A. It is on the Desert Queen.

Recross-examination.

Q. Would you say that the points indicated by "P,"

(Testimony of Dr. A. L. Hudgens.)

“T” and “C” were approximately the position of the posts that you saw?

A. No, sir; as I understand this, this is way over towards the north side line of the northeast corner of the Mizpah claim, in the way it appears to me on this map and from the slope of the hill.

Q. Cannot you get your bearings from that dump?

A. Yes, sir; I do.

Q. When was it you saw those posts?

A. It was in the latter part of the spring, or in the early part of the summer of 1902; some time after the date of May 4th; that was the day of the sale we made, and during this time we were all over this hill with a whole party, and there were absolutely no monuments in that locality at the time.

Mr. FRANK GOLDEN, called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. Mr. Golden, what is your full name?

A. Frank Golden.

Q. And do you know anything about Tonopah, were you ever living there? A. Yes, sir.

Q. When did you first go there?

A. I went there in March, 1901.

Q. State whether or not you ever saw a monument having a notice in signed by one Carr and one Lewis, called the Dave Lewis Hope? A. I have.

(Testimony of Frank Golden.)

Q. Could you tell the Court where that monument was?

A. That monument was almost on the top of Mount Oddie.

Q. About how far from the top of Mount Oddie, and what direction from the top?

A. Well, it was west of the apex of Mount Oddie.

Q. About how far below the apex was it, vertically.

A. I should judge 40 or 50 feet, have to look up the side of the mountain.

Q. And about what distance from the top of the mountain?

A. I could not say; might be 75 or 100 feet; somewhere around there, 75 feet.

Q. Just describe that monument, and what marks were on it, if any?

A. Well, the first day I seen it, it was knocked down, it seemed to be knocked over, and there was a post there, and it looked to me like there was a paper on it, like an attachment paper; it was torn, but you could see by the top of it it was some kind of an attachment paper; part of the paper was torn off.

Q. Did you see any notice of location there?

A. No.

Q. And when did you first see that monument?

A. Well, it was about the third trip that I made up the mountain.

Q. The third trip you made up the mountain?

A. Yes.

(Testimony of Frank Golden.)

Q. Were there any marks on that post, lettered in any way?

A. No, I didn't notice it; well, I noticed it afterwards.

Q. What did you see afterwards?

A. I see the location notice of Carr and Lewis.

Q. Can you state the date when you first saw that monument, in months and days and the year?

A. No.

Q. Don't you remember now? A. No.

Q. You have heard some testimony here with reference to the time when a certain cut was dug by McCune and Enright? A. Yes.

Q. Can you state when that cut was excavated, if you know?

A. Well, it had to be excavated after the 5th day of January; the first day I seen it was in February; I was away for a month; I was out of town for a month before that.

Q. February of what year? A. 1902.

Q. Was it there in 1901? A. No.

Q. Had you been in the vicinity where you saw the cut later on in 1901?

A. Well, I was in that vicinity from the months of July, August, September, October, November and December, and until after the first of the year pretty near all the time, outside of a few days each month, that I would go home, come into Carson.

(Testimony of Frank Golden.)

Cross-examination.

Q. Cannot you fix the time that you first saw that monument that you have testified to?

A. Well, it was some time in November, 1901.

Q. And at that time that post had what you thought was a notice of attachment on it?

A. Now, I don't exactly remember the dates, the time that I noticed this attachment; it was on this second or third time I went there that I seen this attachment paper on there; the first time I seen that attachment paper on was, I believe, the second or third time that I went on the mountain.

Q. The second or third time? A. Yes

Q. You were and are the president of the North Star Company, are you not? A. Yes.

Q. You were the president from its inception, were you not? A. Yes, sir.

Q. Early in the month of June, although the corporation had not been actually, legally organized, you had banded yourselves together to organize the corporation, hadn't you, and had started your work up there on the mountain? A. Yes.

Q. In other words, you started the work there before you got your actual, legal incorporation?

A. Well, we were at work before that on the ground, running a tunnel on the side of the mountain.

Q. I am speaking now with reference to where the present North Star shaft is; were you not at work there along about the 5th or 6th, or 10th of June?

(Testimony of Frank Golden.)

A. I don't remember exactly the date that we organized, and I don't remember the exact date that we started that work.

Q. I believe you filed your articles with the Secretary of State, which is the last step, before the 2d of July?

A. That was in the hands of Mr. Harris, I don't remember.

Q. Don't you recollect you were at work there, starting or squaring off for the work of sinking the North Star shaft, about the 1st or 10th of June?

A. Some time in June; I don't remember the time.

Q. Now, as president of the company, and about that time, did you get a notice from Doctor Porter, signed by Doctor Porter, that he claimed that ground?

A. Not that I remember.

Mr. METSON.—I object; it is not cross-examination.

The COURT.—No, it is not cross-examination; if you object to it on that ground, the objection is good.

Q. Will you examine that and state whether or not that is your signature? (Hands paper to witness.)

A. Part of it is rubbed out, but it looks like my signature, all right.

Q. Examine it closely?

A. I believe that is my signature; yes.

Mr. GOODWIN.—If your Honor please, we will offer this card, which is a receipt, and will follow it up by testimony later on, showing it is the receipt, in Mr.

(Testimony of Frank Golden.)

Golden's handwriting, of a registered letter to him, which Doctor Porter sent, enclosing a certain copy.

(Registry receipt marked Complainants' Exhibit No. 14.)

Mr. METSON.—It is not cross-examination, but I will not object to it.

Mr. GOODWIN.—I understand you will not object on the ground it is not cross-examination?

Mr. METSON.—I do not object to that on the ground it is not cross-examination, but I want you to confine your cross-examination to my direct; that is the point I make.

Q. Who was with you when you went up and examined that post? A. I was all alone.

Q. You had heard of the Dave Lewis Hope claim there at that time? A. Yes.

Q. Did you examine the notice? A. Yes.

Q. When that work was done, did you examine to see whether or not it was within the boundaries of the Dave Lewis Hope? A. When that work was done?

Q. Yes?

A. No, I just looked at the notice; I didn't make any special examination right then; when I was up there on the hill that day,

Q. Mr. METSON.—Was that work done within the boundaries of the Dave Lewis Hope? A. No.

(Testimony of Frank Golden.)

Q. (Mr. GOODWIN.) You are sure that it was not done within the boundaries of the Dave Lewis Hope?

A. I think so, yes.

Q. Where were the boundaries of the Dave Lewis Hope; where was the north corner, the northwest corner, the southeast corner, and the southwest corner?

A. Well, that is, I considered that work was—

Q. Never mind what you considered; tell me where the northeast, northwest, southeast, and southwest corner of the Dave Lewis Hope was?

A. I never knew any corners that he had, only this location; that is the only monument I ever seen him have only this location; that is the only monument I ever seen him have; the next monument I ever seen was one Doctor Porter put on there.

Q. You saw the monuments that Doctor Porter put on there? A. Some of them, yes.

Q. Didn't you see all of them? A. No.

Q. How many of them did you see?

A. Well, I seen them two monuments that is over there; one monument that is over close to the other side of the Belmont shaft, and another perhaps up the mountain.

Q. Didn't you see what was marked on the south center? A. Well, I never noticed.

Q. Didn't you see the three posts that marked the south end of the claim, the Mizpah Intersection or Dave Lewis Hope; the three posts that would mark the south

(Testimony of Frank Golden.)

end line, two of them being corners, and the other a center post?

A. I noticed a post there, but never paid any attention to it; we never paid much attention to them posts at all going up that hill.

Q. You saw a post just above that cut?

A. I saw a post going along there, just seen the posts, and I was walking with somebody going around the hill, and I asked what the posts were, and they told me those posts was being put up by Mr. Porter.

Q. Marked Mizpah Intersection or Dave Lewis Hope?

A. We didn't notice what marks was on them.

Q. You knew there at that time, didn't you, that the posts Doctor Porter claims were put up there about the 17th of May, were actually put up by him at the places that he claims to have put them up; you know that to be a fact, don't you?

A. Yes; we know that he put up posts there.

Q. Don't you know that the posts he put up there marked out a claim 1,500 feet long and 600 feet wide?

A. Well, I don't know; I never examined.

Q. Practically, I don't mean to an exact foot, but practically marked out the claim to that size?

A. I presume that is what they did mean.

Q. Don't you know this cut that you saw up there on the mountain would be near the center line of that claim?

A. No.

Q. Near the center line, I mean?

A. No, that could not be near the center line.

(Testimony of Frank Golden.)

Q. Well, close to it?

A. Not where you start in on that hog's back.

Q. We will lose sight of that post; I am speaking now of the post that Doctor Porter put up there, and taking off the discovery post, that post that was 300 feet north and a little west of the North Star shaft; you saw a post there after Doctor Porter put it up, didn't you?

Mr. METSON.—You are assuming too much, and it is apt to confuse the witness, and I object to the assumptions. If he will take something there, I will not object.

Mr. GOODWIN.—If there is anything conceded in this case, it seems to me those two things are.

The COURT.—I guess they are, the North Star shaft and the cut.

A. This Porter location was entirely to the east; that is, what we call the center of the location must be entirely to the east of the North Star shaft.

Q. Didn't the Porter location as marked out there by Mr. Porter in May, didn't that include the North Star shaft?

A. I don't think so; the Porter location goes to the east of the North Star shaft.

Q. The center line may be a little east of it?

A. The center line must be of course.

Mr. METSON.—Counsel assumed a moment ago, in one of his questions, that Doctor Porter put up a discovery monument near the North Star shaft; I don't think that

(Testimony of Frank Golden.)

he means that, and I do not like the witness to be bound by that kind of question.

The COURT.—It is not understood that the witness is bound by the statement of counsel, and it will not be considered as testimony by the Court.

Q. Along in May didn't you know of a post which was marked as a discovery post of the Mizpah Intersection or Dave Lewis Hope, which was situated about 300 feet north and west of the North Star shaft?

A. I know the discovery post of Dave Lewis on top of Oddie Mountain.

Q. Don't you know of a discovery post marked the Mizpah Intersection or Dave Lewis Hope, that was about 300 feet north or west?

A. That is the only discovery post I ever seen up there the old Dave Lewis post, the monument or point of discovery there.

Q. That is the only one? A. Yes.

Q. You don't know any more about where the lines of the Mizpah Intersection are than the lines of the Dave Lewis Hope?

A. I never seen any lines of the Dave Lewis Hope, never could find any monuments there; the only thing I ever seen was this discovery monument on the top of the mountain, at any time that I have ever been over the hill.

Q. You heard Mr. McCune's testimony, he testified that there was a monument that Dave Lewis took him to about 300 feet north and west of this cut?

(Testimony of Frank Golden.)

Mr. METSON.—I don't recollect Mr. McCune's testimony that way, and object to it as not being correct, and on the ground that it may confuse the witness.

The COURT.—I think Mr. Golden understands; he is not testifying to what some other witness said; he testifies to his own knowledge and nothing else; what you know, and not what somebody else may have said.

A. The only post I have ever examined very much up there was the Ivanpah, and the North Star tunnel, and I have been several times up to this point of discovery of the Dave Lewis Hope; but whatever has been done afterwards, I never paid much attention to it; the balance of our partners in the North Star tunnel, they used to look after all that part of it; my part of it was to look after the workings of the North Star tunnel, and I didn't have much to do with anything else.

Q. Now, as a representative of the North Star Tunnel Company, didn't you have Mr. Davis make a trade with Lewis for the Dave Lewis Hope claim? A. Never.

Q. Didn't you authorize him to pay a hundred dollars in cash, and give him 5,000 shares of North Star stock?

A. Never.

Q. Did you hear Mr. Davis's testimony here a little while ago? A. I did.

Q. What is that transaction, then?

A. Well, I will have to start at the commencement of it, with that matter; can I commence at the transaction from the start, how Lewis got that money and that stock?

(Testimony of Frank Golden.)

Q. Well, you have answered the question.

Mr. METSON.—He has asked for the transaction, and I think Mr. Golden is entitled to go ahead and answer the question.

The COURT.—You are taking a good deal of time on outside matters that are not going to figure in the case.

Mr. GOODWIN.—I will withdraw the question.

A. I would like to answer it.

Q. I will withdraw the question.

A. I will put it very plainly to you.

Mr. GOODWIN.—We may be making Mr. Golden our witness for this particular purpose.

Mr. METSON.—We have no objection if it is competent; we want the Court to know the facts.

Q. As president of the company did you receive a notice along about the 10th, 11th or 12th day of June, some time along there, signed by Mr. Porter, notifying you that the work that was being done there at the North Star shaft was trespass work?

A. I never remember seeing it.

Q. Did you learn as president?

A. I received letters from Mr. Jury, I remember, and Mr. Chandler, personal letters, in regard to their interest in that property, but outside of that, they are the only letters that I remember getting.

Q. Don't you recollect about the time that you started work there, that it was reported to you that Mr. Porter

(Testimony of Frank Golden.)

went up there with two witnesses and read to your foreman a trespass notice, and tacked a copy of it up on the building that you had there, a little shack?

A. Somebody went up there and read it to our foreman and me?

Q. Not to you, but to your foreman in charge of the men there, and tacked a copy of it up on the building, and shortly afterwards didn't you receive one through the mail?

A. I have never seen a copy of it, and my foreman has never told me anything about it.

Q. And you never heard of it until you got here in court?

A. Never have heard of it until I got in court.

Q. That is the fact, is it?

A. That is the fact, sir.

Mr. GOODWIN.—I don't know, your Honor; I am informed by Mr. Porter that he went up there, and in the presence of Mr. Booth, Mr. Egan and Mr. Lewis, did what I state here, what I have indicated by my questions; that he enclosed a copy of that notice of trespass to Mr. Golden in a registered letter, and got back his registry receipt for it.

Mr. METSON.—I don't see that it is pertinent or proper, that is the objection.

Mr. GOODWIN.—I would take time to get some—either my witnesses, your Honor, or some witness on the other side.

(Testimony of Frank Golden.)

WITNESS.—Who would that letter be addressed to, may I ask?

Q. It was addressed to the secretary of your company, and the receipt for that letter came back signed by you?

A. May I explain that thing to you?

Q. That is what I want, simply to get at the facts; Doctor Porter is lying to me, or else you are mistaken?

A. That letter might come and I receipt for it, and if it was for the North Star Tunnel Company, I would not open it or know anything about it.

Q. Don't you know of this transaction?

A. I do not, and never knew it in my life.

Mr. GOODWIN.—I would like time, your Honor, to get Mr. Egan or that other witness here.

The COURT.—You will have to pursue your own course in the matter, whatever steps you are going to take about it.

Mr. METSON.—I would like to introduce this paper. It is admitted, I understand, by counsel, that the defendant is a corporation, duly organized under the laws of this state, and that the title of Mr. Ish in the Ivanpah was duly and regularly conveyed to the corporation by deed of record.

Mr. GOODWIN.—I think whatever right and title he had passes.

Mr. METSON.—This is the additional certificate of lo-

(Testimony of Frank Golden.)

cation, and I ask to have it admitted in evidence and considered as read.

Mr. GOODWIN.—We object to it generally on the ground it is not sufficient, and not within the statutes.

(Additional and amended certificate of Ivanpah claim admitted and marked Defendant's Exhibit "E.")

Mr. METSON.—We introduce this printed application for patent and certificate of O. H. Gallup as register, without objection on either side, and it may be considered as read.

(Paper marked Defendants' Exhibit "F.")

Mr. METSON.—I will introduce now a certified copy of the amended and additional certificate of location of the Mizpah Intersection, and on this certified copy are some lead pencil marks or memoranda that I put there, and it is understood that the lead pencil memoranda are no part of the record, and were put there by me when I was comparing the reading with Doctor Porter.

The COURT.—Let the record so show.

(Paper marked Defendants' Exhibit "G.")

Mr. METSON.—We offer now a certified copy from the County Recorder of the Ivanpah, showing the filing of the papers.

(Abstract of title Ivanpah Mining Claim marked Defendants' Exhibit "H".)

Mr. GOODWIN.—That there may be no confusion, your Honor, they have offered a certificate of location; now

(Testimony of Frank Golden.)

they offer a certified copy of their notice of location; and if your Honor will examine the two, you will see they are identical, except one has "Certificate of Location" written across the top, but the certificate of the recorder is that it is a certified copy of the Notice of Location. They are both the same instrument.

Mr. METSON.—I think they are, but we do not concede the proposition.

The COURT.—Let them go in. One is called a certificate of location, and the other a notice of location, but they are both the same instrument, or substantially the same.

Mr. METSON.—I think it is correct, but I do not want to admit it.

Mr. GOODWIN.—What I mean is this: There is only one record, and that record is what is certified to here as being the notice of location, and also as a certificate of location, and it is just the one record. That is the fact, is it not?

Mr. METSON.—Well, we think so.

The COURT.—They do not admit that, but the record will show, and the witness who testified on the stand, in testifying to it said, that there was but the one paper. When the controversy came up whether it was a certificate or notice of location, he testified that there was but the one paper, so far as he was concerned, that was filed; they

(Testimony of H. Ramsey.)

have two, but whether they are the same or not can be readily determined.

Recess until 1:30 P. M.

After Recess.

Mr. H. RAMSEY, called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. As I understand it, to make this matter short, you were in Tonopah in 1901? A. Yes, sir.

Q. And about the first of January, 1902, you went out of business, and didn't do much of anything about Tonopah or Tonopah affairs until when?

A. Well, I don't know, I think it might have been later than 1902, I don't know, I don't think I was there much during the year 1902.

Q. That is when you were taken sick, the first of January, along about then?

A. Yes, about the 15th of January, taken sick, but I wasn't there after the first of January, I was in Silver Peak.

Q. Now, Mr. Ramsey, you have heard the testimony with reference to a certain cut being excavated near where the North Star main shaft is now? A. Yes.

Q. Tell the Court whether or not that cut had been excavated prior to the first of January, 1902?

A. It had not.

Q. You have heard some testimony with reference to a

(Testimony of H. Ramsey.)

monument or notice of location of the Dave Lewis Hope, alluded to on one side as the location monument of the Dave Lewis Hope; state whether or not you have ever seen any monument with a Dave Lewis Hope location notice in it? A. I did.

Q. Where?

A. Up near the apex of Oddie Mountain.

Q. How far below the apex vertically?

A. I should judge it would be about 250 feet west of the apex of Oddie Mountain.

Q. Was the monument higher or lower than the top of the mountain?

A. A little lower than the top of the mountain.

Q. About how low?

A. I could not say as to that, the mountain came up this way, and the monument would be down a little ways.

Q. About what difference would there be, approximately?

A. I could not say as to that; from the apex down would be like that, and the monument would be down here.

(Indicating.)

Q. Give us your idea; would it be ten feet or a hundred, or between?

The COURT.—Ten feet or a hundred feet lower than the apex or highest point.

A. It could not be a hundred feet, I don't think; it is a very hard thing to get at.

Q. Your judgment, that is all.

(Testimony of H. Ramsey.)

A. You mean how much higher the apex of the mountain would be then the top of the monument?

The COURT.—Than the top, where the monument was placed?

A. Well, put it 25 feet, it might be more and might be less.

Q. What distance from the top of the mountain to the monument?

A. From the apex?

Q. Yes, sir?

A. I should judge about 250 feet; 40 or 50 feet, along there some place.

Q. And what direction? A. West.

Q. West from the apex of the mountain? A. Yes.

Q. Now, with reference to its being in a valley or a draw or canyon, or a ridge, where was the monument?

A. That monument?

Q. Yes, sir?

A. Well, it was kind of on the back bone, came down over the apex of the mountain.

Q. Now describe the monument?

A. The monument was a 4 by 4, I think, scantling in a rock; the post was a 4 by 4 in a rock monument.

Q. About how high was the monument?

A. I don't know *how* large, about four feet maybe.

Q. And about what diameter was the base, the width?

A. Well, two or three feet.

(Testimony of H. Ramsey.)

Q. What was marked on the post, this scantling, if anything? A. I didn't see any mark on the post.

Q. Did you see any marks in the monument that you remember?

A. There was a little can in the monument with a notice in it.

Q. Tell us what the notice said?

A. Well, I just glanced over the notice, and it read, claiming 500 feet in a northwesterly direction, I think, and a thousand feet in a southeasterly direction, and 300 feet on each side.

Q. What names were signed to it, if any names?

A. Carr and Lewis's names were signed to it.

Q. What was the date, if any date?

A. The 26th of August, 1901.

Q. And did they give the mine a name?

A. Dave Lewis Hope.

Q. Now do you know where the monuments of the North Star Tunnel were? A. Yes, sir.

Q. With reference to this Dave Lewis Hope monument that you have testified to, where were the monuments fixing the line of the tunnel, of the North Star tunnel?

A. Well, this Dave Lewis Hope monument was, I should judge about three or four hundred feet from that.

Q. Which way?

A. Up towards the apex of the mountain, in an easterly direction, I should judge.

Q. How many times did you see that monument that

(Testimony of H. Ramsey.)

you have designated as having a notice of location of the Dave Lewis Hope claim in?

A. I don't know how many times; I have seen it several times in the fall of 1902; I don't remember how many times, don't remember exactly the dates I was there; I remember seeing it that fall, though.

Q. Do you remember having been up on that mountain at any time with Mr. Curtis? A. Yes.

Q. Was this cut that has been testified to by the complainant in this case, was that there at that time?

A. It was not.

Q. How do you know?

A. Well, I know because we were right in the particular spot; sat down there for a while, probably half an hour we sat there and talked, Mr. Curtis and Mr. Salesberry and myself.

Q. Was there any digging, or use of a pick there at that time?

A. I didn't notice any digging at all.

Q. Did any of your party do any digging there at that time?

Q. I did a little digging with a pick; went around and made a little hole a few inches deep.

Q. What were you digging on, if anything?

A. We were sitting on the ground there, and a kind of streak ran down there, I dug down and dug out some black looking stuff, manganese, that is about all.

Q. When did you last see that monument that was

(Testimony of H. Ramsey.)

there, that you designate as having the notice of location in? A. The last time I seen it?

Q. Yes, sir?

A. I think it was on the 7th of this month.

Q. 7th day of July, 1904? A. Yes, sir.

Q. About what time?

A. Well, I think it was either the 7th or 8th; I think it must have been the 7th, because we started up here on the night of the 8th; I think it was on the 7th.

Q. Was it in the same place that you first saw it, when you saw it on the 7th of July, 1904?

A. Yes, sir; it was in the same identical place.

Cross-examination.

Q. In preparing for this trial, Mr. Ramsey, why didn't you have a survey made locating exactly that state? A. We did.

Q. You did? A. Yes, sir.

Q. Is the surveyor that made it here?

A. Yes, sir.

Mr. GOODWIN.—Have you a survey of that, Mr. Metson?

Mr. METSON.—No, we have no survey.

Q. Did you see other posts or monuments there marking the Dave Lewis Hope at anytime?

A. I did not.

Q. Never mind any posts or monuments there marked Dave Lewis Hope? A. Only that one.

(Testimony of H. Ramsey.)

Q. That is the only one? A. Yes, sir.

Q. Did you ever see any marked Mizpah Intersection, or Dave Lewis Hope? A. No, sir.

Q. You never did? A. No, sir.

Q. Did you hear of Doctor Porter's being on the ground there at any time along during May?

A. I did not; I heard of his being in the camp, that is all.

Q. Were you there at the time, or was that when you were away?

A. I think I was away at that time; I am not quite sure; I am inclined to think I was away at that time.

Q. Didn't you hear about some stakes that he put up there?

A. No, sir, I never heard of any stakes that Mr. Porter put up.

Q. Did you hear of any stakes being put up there marking what we claim as the Dave Lewis Hope?

A. Did I ever hear of any?

Q. Yes.

A. Yes, I have heard of some stakes that was marked Mizpah Intersection, or something like that.

Q. Didn't you ever go and examine them?

A. Never did.

Q. Don't know where they were? A. No, sir.

Q. Never looked for them? A. Never did.

Q. And really don't know anything about them?

A. Only what I heard.

Q. Only just what you heard? A. Yes.

(Testimony of H. Ramsey.)

Q. Did you ever hear about a stake or monument, just a little west of north about 300 feet above the cut you are referring to?

Mr. METSON.—We object to what he heard; just ask what he saw.

Q. Well, did you ever examine at a point about 300 feet north and west of the cut?

A. I never examined particularly to hunt up a stake of that kind; I have been along that course there a good many times, and never seen a stake of that description.

Q. You never saw any stake there?

A. No, sir.

Q. Did you ever see any stake down on that same course, down near the line of the Mizpah ground, which marked the center line of the Mizpah Intersection?

A. Never did.

Q. Do you know of some surveyors going up there to make a survey of that claim at any time?

A. No, sir.

Q. Didn't you and some of the parties in possession there prevent a survey being made at one time?

A. Did not.

Q. You are sure of that? A. I am sure.

Q. Didn't you and some of the company keep Mr. Booker from making a survey there at one time, or his men from making a survey? A. I did not.

Q. Didn't the company?

(Testimony of H. Ramsey.)

A. I don't know anything about what the company did, I never heard anything about it.

Q. Don't you know that in January, maybe the specific date might refresh your memory, January 7th, 1903, that the company prevented Mr. Booker's men from making a survey there?

A. I thought you had reference to an earlier date than that?

A. No, January 7th, 1903?

A. Why, Mr. Booker, if I understand right, got a telegram from a gentleman sitting over there (indicating), a man named Duryee, to go up there and survey, and he got permission from us.

Q. Now, just confine yourself to January 7th?

A. I could not say the date, I don't remember exactly, I don't remember the date; that is something I cannot remember.

Q. You don't keep track of dates?

A. No, sir.

Q. Now, don't you recollect hearing of Mr. Shoots, who was in the employ of Mr. Booker, being up there about January 7th to make a survey?

A. I didn't hear anything about it.

Q. You never heard of it?

A. No, sir; what date was that?

Q. I think it was January 7th, 1903?

A. I don't know anything about it.

(Testimony of H. Ramsey.)

Redirect Examination.

Q. State whether or not you, on behalf of the North Star Tunnel Company, or anyone to your knowledge, your own personal knowledge, consented that Mr. Booker should make a survey for these gentlemen on the other side? A. Would I consent to it?

Q. Did Mr. Booker come to you and request you and ask you if he could make a survey of this Dave Lewis Hope or Mizpah Intersection?

A. On the telegram that he received from San Francisco.

Q. On a telegram from Mr. Duryee?

A. I did give him permission, told Mr. Pittman to let him go on the ground.

Recross-examination.

Q. Prior to that had not you forbade their going on the ground?

A. No, sir; I did not; never had any occasion to forbid anybody from going on the ground.

Mr. J. G. BOOKER, called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. Mr. Booker, are you a United States Deputy Mineral Surveyor? A. Yes, sir.

Q. And were you in the year 1903? A. Yes, sir.

Q. State whether or not on behalf of Doctor Porter

(Testimony of J. G. Booker.)

and others you made an application to Mr. Pittman, or Mr. Ramsey, or anybody else, for permission to go upon the Ivanpah ground, or the North Star ground, and make a survey or surveys of the so-called Dave Lewis Hope or Mizpah Intersection claim? A. I did.

Q. Did they or did they not grant or refuse the request?

A. Granted permission to make the survey.

Q. Did you or not communicate the granting of the request to Doctor Porter and others?

A. No, sir, not to Doctor Porter.

Q. To whom? A. To Schuyler Duryee.

Q. Can you state the date, about when this was done?

A. I think it was in the early part of October, 1903.

Cross-examination.

Q. Previous to that time had you attempted to make a survey for Mr. Duryee, or any of the parties plaintiff, on that ground?

A. Men working for us had attempted to make a survey for Doctor Porter.

Mr. METSON.—What you know, and nothing else.

The COURT.—What you know; don't tell what anyone told you.

A. I don't know anything about it.

Q. Didn't they employ you to make a survey, and

(Testimony of J. G. Booker.)

didn't you send out a man to do it, and were not you prevented in making that survey?

A. I received an application—

Mr. METSON.—I object to that.

The COURT.—Well, I would like to get at the fact.

Mr. METSON.—I withdraw the objection; let him tell all that he has heard.

A. In the month of January, 1903, I was in attendance upon this court; Mr. Bradford was away; Lester Bell was employed in our office as head man; Elmer Shoot was employed as surveyor; Lester Bell wrote a letter while I was in Carson and said he had sent Shoot out to make a survey of the Dave Lewis Hope mining claim, and was prevented from so doing.

Q. Did he say by whom he was prevented?

A. I think that he did.

Q. Do you know by whom?

A. No, not all the names of the parties.

Q. But you understood he was prevented by—

Mr. METSON.—I object to what he understood.

Q. Was it the defendant in this action, the North Star Tunnel Company?

A. Yes, sir; in power of the North Star at that time.

Q. Are you not mistaken, wasn't it later than early in October; wasn't it along about the 28th of October, that that request was granted?

A. No, I think not; that is very early after I received the wire from Schuyler Duryee, asking for the price of

(Testimony of J. G. Booker.)

a survey of that claim, and according to my recollection that wire was received by me early in October.

Q. As soon as you got that permission, you wrote him, didn't you?

A. I think I wired him I might have written, and I think I did write.

Q. If you wrote him, and that letter was dated October 28th, 1903, could you fix the date from that?

Mr. METSON.—We object to that, if he did so and so, it is assuming facts.

The COURT.—All you want to do is to fix the date?

Mr. GOODWIN.—That is all; I do not want to read this letter in evidence, but there is a letter from Mr. Booker to us dated the 28th of October, in which he states that permission is granted. (Shows letter to witness.)

A. Yes, that seems to be dated the 28th; very likely it is the 28th.

Q. Now, would you want to change your testimony in the record after seeing that letter?

A. Well, I think so; yes.

Redirect Examination.

Q. How soon after the wire from Mr. Duryee did you make application, and it was granted, Mr. Booker?

A. Well, I think it was very soon; not longer than three or four days, if that long, because I was very anxious to have the thing settled, and go ahead with the work.

(Testimony of J. G. Booker.)

Q. As soon as you got the wire from Schuyler Duryee, did you or not, bring it to Mr. Pittman and get permission, and make immediate reply?

A. No, I wired him once or more before I went to Mr. Pittman.

(By Mr. GOODWIN.)

Q. Now look at that telegram and see if that is the telegram you sent to Mr. Duryee? (Hands telegram to witness.)

A. That is the one.

Mr. GOODWIN.—If your Honor please, we will offer this in evidence for the purpose of fixing the date, that is all.

Complainants' Exhibit No. 15.

Tonopah, Nev. Oct. 27/03.

Schuyler Duryee, Grand Hotel, San Fran.

If adverse survey desired send Marshal to protect surveyor and some person to identify ground. Charges one hundred five dollars.

BOOKER & BRADFORD.

(Marked Complainants' Exhibit No. 15.)

Q. Now, if you got permission, it must have been after the 27th, wasn't it?

A. If the date of that thing is correct, yes.

Mr. METSON.—Now give us the one granting permission, please?

Mr. GOODWIN.—There was no telegram granting permission, Mr. Duryee says.

(Testimony of J. G. Booker.)

(By Mr. METSON.)

Q. Did you, or not, telegraph as soon as permission was granted?

A. Well, I am not positive about that; I perhaps wrote them; I wrote them several times; what the substance of those letters was, I have forgotten, since the copy-book was burned.

Q. You spoke of a surveyor going upon this ground, was he a Deputy United States Mineral Surveyor?

A. No, sir.

Q. A surveyor employed as a subordinate under who, in your office?

A. He was then under Lester Bell, who was then in charge of our office.

Q. All that you know about it is what Mr. Lester Bell wrote you, as to report made by him to Lester Bell?

A. That is all.

Q. Now, didn't Lester Bell report to you that the trouble was upon the survey of the Favorite, and that they were the ones that prevented the survey?

A. No, sir, the Favorite does not touch any portion of that claim to my knowledge, I don't think it was the Favorite, because he would have nothing to do with the Favorite.

Recross-examination.

Q. Now the Favorite lays where, with reference to the top of Mount Oddie, the summit of Mount Oddie?

A. That comes over this side of the summit a short distance, I could not state how far.

(Testimony of J. G. Booker.)

Q. Well, don't it come over west and south a little, of the summit? A. A little way, very little.

Q. Would a post within, say from 250 feet west of the summit of Mount Oddie, be on the Favorite?

A. No.

Q. It would not? A. No, sir.

Q. How far over would it come?

A. I could not say how far it would come over the mountain, but it does not come very much; I think the end line runs pretty nearly over the end of the summit.

Q. Counsel asked you if you didn't understand that this Dave Lewis Hope conflicted, or the survey was stopped, because it conflicted with the Favorite?

Mr. METSON.—No, I did not; I asked if the Favorite had not prevented this surveyor from doing this work.

Q. You don't understand that the Dave Lewis Hope interfered in any way with the Favorite, do you?

Mr. METSON.—I object to what he understands, and it is not cross-examination.

A. Well, the Favorite was surveyed, I surveyed it myself before I came over here that time; it didn't require any further survey.

Q. Mr. Booker, have you made a map of Mount Oddie and the claims in that locality and neighborhood?

A. Yes.

Q. Does the summit of Mount Oddie as represented on that plat bear a correct relation to the claims surrounding it?

(Testimony of J. G. Booker.)

Mr. METSON.—I object to that as not cross-examination and that plat is not identified.

The COURT.—He is asking for his own information, not about the testimony in the case.

Mr. GOODWIN.—It is just for my own information, is the reason I ask the question preliminary.

A. Approximately correct.

Q. Well, on that plat does not the Favorite lie entirely west of the summit? A. No, sir.

Q. It does not? A. No.

Mr. METSON.—We would like to introduce these patents, if you have no objection. Patents of the Montana Tonopah and Triangle, showing these exclusions.

Mr. GOODWIN.—The exclusion you allege in your pleading?

Mr. METSON.—Yes.

Mr. GOODWIN.—We have no objection for that purpose.

Mr. METSON.—They may be considered as being read in evidence, and we ask leave to withdraw them, after leaving certified copies. (“Lucky Jim” patent marked Defendants’ Exhibit “I”; “Triangle Lode patent” marked Defendants’ Exhibit “J.”)

Mr. METSON.—I understand it is admitted that we are a corporation, and entitled to locate and hold mines,

(Testimony of J. G. Booker.)

and incorporate them, and everything of that sort; the purposes are broad.

Mr. GOODWIN.—We alleged it, and you have admitted it.

(It is admitted that Mr. Bradford was a United States Deputy Mineral Surveyor.)

Mr. METSON.—Do you want to put Mr. Davis back on the stand in regard to those books?

Mr. GOODWIN.—There are some entries of 3 by 4 that we have found.

Mr. METSON.—Mr. Davis is not here, but we will read them into the record. On top of page 159, there seems to be one piece of 3 by 4 by 16.

Mr. GOODWIN.—Those are between August 7th and September 12th.

Mr. METSON.—That last is under date of August 27th, charged to Coslett, Stauts & Company. Page 264, under date of September 8th, charging Brougner Brothers with four pieces 3 by 4 by 16.

Mr. GOODWIN.—That is all that was found in that book. Now from September 12th to October 12th.

Mr. METSON.—Page 36 under date of September 16th, to Brown & Cutting, 15 pieces 3 by 4 by 16. Under date of the 16th to Kilpatrick, one piece of 3 by 4 by 8, and one 3 by 4 by 16. September 16th, 1901, one piece of 3 by 4 by 16, to Coslett, Stauts & Company.

(Testimony of J. G. Booker.)

Page 82, September 21, to Coslett, Stauts & Company, one piece 3 by 4 by 16; September 21st, Tonopah Company, three pieces 3 by 4 by 16; Charles Cheney, two pieces 3 by 4 by 16. September 23d, three pieces 3 by 4 by 16. A. C. Cary, one piece 3 by 4 by 16, to the Tonopah Tunnel Company.

Mr. GOODWIN.—It simply shows that there were sales made.

Defendant rests.

REBUTTAL.

Doctor JEROME P. PORTER, called in rebuttal, testified as follows:

Direct Examination by Mr. GOODWIN.

Q. In the fore part of June, 1902, did you serve any writing upon any persons that were on the Dave Lewis Hope claim, as you understood it? A. I did.

Q. Where were these people with reference to the cut you testified to, and with reference to the present North Star shaft?

A. They were right at the North Star shaft.

Q. Who were there?

A. Well, there were a number of workmen, I think five or six.

Q. Was there anyone in charge?

A. There was one man pointed out to me as the boss of the men.

(Testimony of Dr. Jerome P. Porter.)

Q. Now, how did you happen to be there at that time?

Mr. METSON.—We will object to that; if he did serve a paper, let it go at that, and the contents of the paper.

The COURT.—It must be in rebuttal; I don't suppose you want to enlarge upon it; it is the fact, if he did, and if so, upon whom, and where.

Mr. METSON.—We will admit that he served it upon a duly authorized agent of the North Star Tunnel Company, and it is in the words and figures of the adverse.

Mr. GOODWIN.—We will accept the admission that at that time this notice I hold in my hand was served on a duly authorized agent of the North Star Tunnel Company.

Mr. METSON.—Some agent of the tunnel company, but none of these witnesses; a duly authorized agent. In other words, we do not want to agree that our witnesses did not tell just exactly the facts. We admit that a duly authorized agent of the defendant received a notice as set forth in your adverse in the words and figures there stated, and that it was none of the people who have been on the stand on our side.

Mr. GOODWIN.—I do not accept that, because we sent it to the secretary of the North Star Company, and got back the receipt of Mr. Golden, to the letter, and Mr. Golden denies it.

(Testimony of Dr. Jerome P. Porter.)

The COURT.—They make that offer, and admit it, and it seems to me that covers the ground, and avoids all of the testimony in regard to it, or any conflict there may be. The admission is broad enough, that it was an authorized agent, and is certainly as good as the proof, and that does away with any evidence.

Q. (Mr. GOODWIN.) Doctor Porter, is that a copy of the notice that they have admitted was signed—that is you admit, Mr. Metson, that this is a copy of the notice that was signed?

Mr. METSON.—No, I have not made any admission about that. I am speaking about what is in evidence in your adverse. You have set out, as I understand, what you claim to be a copy of what you served.

Q. (Mr. GOODWIN.) This is a copy of that, the same thing?

A. Yes, sir; a copy of what I served.

Mr. GOODWIN.—If it is not the same thing, I will ask the court to strike it out, when it is discovered there is any difference. If it is not the same thing then the Court will strike it out.

The COURT.—Certainly, I would do that myself.

(Trespass notice marked Complainant's Exhibit No. 16.)

Mr. GOODWIN.—We offer in evidence the deed of D. R. Lewis to R. B. Davis, that was testified to as of the

(Testimony of Dr. Jerome P. Porter.)

28th day of June and acknowledged on the 30th day of June. I intended to offer it when Mr. Davis was on the stand. This is a certified copy, I believe.

(Deed marked Complainant's Exhibit No. 17.)

Mr. CHARLES J. CARR, called in rebuttal, testified as follows:

(By Mr. GOODWIN.)

Q. Mr. Carr, some of the witnesses have testified with reference to certain transactions alleged to have been done by you with reference to selling lots more than once in Tonopah, and a certain check transaction, and with the permission of the Court, I would like to have Mr. Carr explain those matters.

The COURT.—Is there any objection on the part of counsel?

Mr. METSON.—I do not think that would be rebuttal, and is objectionable.

Mr. GOODWIN.—It is clearly not legal rebuttal.

The COURT.—It is not legal rebuttal. It would not be testimony, would it, what you want would be the personal privilege of this man's making a statement in regard to certain facts.

Mr. GOODWIN.—That is the practical legal effect of it.

The COURT.—Of course, the general proposition, as

(Testimony of Charles J. Carr.)

I stated before, and admissible, is the general reputation in the community where a party resides. I see no objection to his making a statement if it is a personal matter but it is not legal testimony. It is in the nature of a personal privilege; a man's reputation has been attacked, and I suppose he ought to be allowed the personal privilege of explaining his general acts, but it would not change the testimony as to his reputation. It is not admissible, of course, and it cannot be considered as legal evidence. If admissible at all, it certainly would be as a personal privilege, that a man might make an explanation for himself, but it is a matter that could not be considered by the Court in any legal effect on the testimony.

Mr. GOODWIN.—If it would not be so considered, I do not want to take up the time of the Court. So far as the legal effect of it is concerned, I agree with your Honor, but in justification to Mr. Carr.

The COURT. —If it were anything that would affect my ruling on legal grounds, I would allow it in a minute, but it would simply be a matter personally with Mr. Carr, and would not have any effect on the issues involved in the case, and I think we had better leave it out.

Mr. GOODWIN.—I think that is all.

Mr. METSON.—Will your Honor pardon us a moment, I would like to recall Mr. Booker.

Mr. J. G. BOOKER, recalled by defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. Mr. Booker, did you make a measurement for Mr. Ramsey from the top of Oddie Mountain to a monument on the ground? A. Yes, sir.

Q. Westerly? A. Yes.

Q. Can you give us the distance and course?

A. I do not think I can give the exact distance, or the course, because it was destroyed; approximately, it was between 200 and 250 feet northwesterly, general direction, more westerly than north.

Q. Now from point to point, to make it clear in the record, what do you mean, the monument is westerly and north, or the apex is westerly and north?

A. From the south of Oddie Mountain the monument is northwesterly between 200 and 250 feet from the summit.

Q. How was that monument marked?

A. There was a post that was marked "August 26th."

Q. Mr. GOODWIN.—The post was marked "August 26th"?

A. The post was marked "August 26th," the center line Lewis Hope; evidently there had been a word obliterated, which I could not make out, and besides those markings were, "Lewis and Carr"; I believe that was all.

(Testimony of J. G. Booker.)

Q. Mr. GOODWIN.—Lewis and Carr's name was on?

A. Lewis and Carr's name.

Q. Mr. METSON.—Mr. Booker, I understand that all your field-notes, and everything were burned up in the fire at Tonopah a short time ago, is that correct?

A. That is true.

Q. Did you make the survey of the Ivanpah for patent?

A. Yes.

Q. And put up the Ivanpah patent monuments?

A. I did.

Q. Taking the easterly side line of the Ivanpah as laid by you on the ground for patent in this matter, in this application, was or was not this monument west or east of the east side line of the Ivanpah?

A. It was east.

Q. About how far?

A. Well, I should judge from 150 to 200 feet.

Q. (Mr. GOODWIN.) When did you first see that stake, Mr. Booker?

A. I think it was in the latter part of October some time, 1903.

Q. 1903? A. Yes, sir.

Testimony closed.

[Endorsed]: In the Circuit Court of the United States, Ninth Circuit, District of Nevada. Jerome P. Porter, John G. Jury, Thos. W. Chandler, Charles J. Carr and Mary Thompson, Plaintiffs. v. Tonopah North

Star Tunnel and Development Company (a Corporation), Defendant. No. 771. Testimony. Garoutte & Goodwin, for Plaintiffs. Campbell, Metson & Campbell, Key Pittman and K. M. Jackson, for Defendant. Filed August 9th, 1904. T. J. Edwards, Clerk.

Complainants' Exhibit No. 7.

ADVERSE CLAIM. No. 121. In the Matter of the Application of the TONOPAH NORTH STAR TUNNEL AND DEVELOPMENT COMPANY for Patent for the Ivanpah Mining Claim. U. S. Land Office, Carson City, Nevada. Filed Nov. 18, 1903. O. H. Gallup, Register. Filed by Schuyler Duryee, Grand Hotel, San Francisco, Calif.

IN THE UNITED STATES LAND OFFICE, CARSON CITY, NEVADA.

In the Matter of the Application of the Tonopah North Star Tunnel and Development Company, a corporation, for United States patent for the Ivanpah quartz mine, vein, lode, or mineral deposit, and the land and premises appertaining thereto, situated in the Tonopah Mining District, in the County of Nye, State of Nevada.

To the Register and Receiver, United States Land Office, Carson City, Nevada, and to the above-named applicant for patent for the said Ivanpah quartz mine, vein, lode or mineral deposit, and for the land and premises appertaining thereto.

You are hereby notified that Jerome P. Porter of Angels Camp, California; John G. Jury of San Francisco, California, Thomas W. Chandler, Charles J. Carr, and Mary Thompson, of Berkeley, California, all citizens of the United States and of the State of California, are the lawful owners and entitled to the possession of the said quartz mine, vein, lode or mineral deposit described in the application for United States patent aforesaid as the Ivanpah quartz mine, vein, lode or mineral deposit, as shown by the diagram posted on said claim and the copy thereof filed with said application in the Land Office at Carson City; and as such owners these contestants, the said Porter, Jury, Chandler, Carr and Thompson do protest against the issuing of a patent thereon to said application, and do dispute and contest the right of said applicant to a patent for the mine, vein, lode or mineral deposit described in the application for patent aforesaid.

And these contestants do present the nature of their adverse claim, and do fully set forth the same in the affidavit hereto attached, marked Exhibit "A," and the further exhibits attached thereto and made part of said affidavit.

That the said Porter, Jury, Chandler, Carr, and Thompson respectfully ask the said Register and Receiver, that all further proceedings on the application for patent aforesaid be stayed until the rights of these contestants shall have been settled or decided by a court of competent jurisdiction.

These contestants have duly appointed Schuyler

Duryee of the City of Everett, County of Snohomish, State of Washington, (but temporarily sojourning at the Grand Hotel, City of San Francisco, State of California), their Agent and Attorney in Fact, with full power to represent them in all matters arising from, and growing out of, this protest either before the United States Land Office or before the court that may have jurisdiction thereof.

Signed at San Francisco, California, this 14th day of November, 1903.

Witnesses: As to Porter, Floyd De Voe. Jerome P. Porter. Witness as to John G. Jury, L. H. Whipple. John G. Jury. Witness F. S. Kordt. Thos. W. Chandler. As to Carr, Floyd De Voe. Charles J. Carr. Witness as to Mrs. Mary Thompson, J. W. Cramer. Mrs. Mary Thompson.

Exhibit "A."

State of California,
City and County of San Francisco,—ss.

Charles J. Carr, for himself and on behalf of Jerome P. Porter, John G. Jury, Thomas W. Chandler, and Mary Thompson, co-owners with him in the Dave Lewis Hope Mining Claim (otherwise known as Mizpah Intersection) situated in Tonopah Mining District, County of Nye, State of Nevada, being first duly sworn according to law, deposes and says: That the said Porter, Jury, Chandler, Thompson, and affiant are citizens of the United States and of the State of California; that they are the contestants and protestants named in, and who subscribed the notice and protest hereto prefixed; that

they are the owners by purchase or location of the lode or vein of quartz or other rock in place, bearing gold, silver, and other metals shown and described in the application for United States patent filed by the Tonopah North Star Tunnel and Development Company, in the United States Land Office at Carson City, Nevada, in which application said lode or vein is named the Ivanpah quartz mine, vein, lode or mineral deposit; that the said lode or vein is situated in the Tonopah Mining District, County of Nye, State of Nevada.

This affiant further says: That on the day of location the premises hereinafter described were mineral lands of the public domain, and entirely vacant and unoccupied, and were not owned, held or claimed by any person or persons as mining ground or otherwise, and that while the same were so vacant and unoccupied, and unclaimed, to wit: On the twenty-sixth day of August, 1901, Dave R. Lewis and Charles J. Carr (the affiant), each and both of them being citizens of the United States, entered upon and explored the premises, discovered and located the lode or vein and premises embraced in the application for United States patent by the Tonopah North Star Tunnel and Development Company, and occupied the same as a mining claim; that the said premises so located and appropriated consisted of one thousand (1000) feet running in a southeasterly direction, and five hundred (500) feet running in a northwesterly direction from the point of discovery, with three hundred (300) feet on each side of the vein, as will fully appear by reference to the Notice of Lo-

cation, a duly certified copy whereof is hereto annexed, marked Exhibit "B," and hereby made a part of this affidavit; that said claim at the time of its location was named by the said locators Lewis and Carr the "Dave Lewis Hope"; that the locators after the discovery of the said mineral lode or vein, drove a stake on said lode on the discovery claim, erected a monument of stone and earth around said stake, and placed thereon a written Notice of Location, describing the claim so located and appropriated, giving the names of the locators and quantity taken by each; that the said locators did all the acts and performed all the labor required by the mining laws of the United States, and the laws and regulations of the said Tonopah Mining District, and State of Nevada; that the locators of said lode or vein, named the "Dave Lewis Hope," caused said Notice of Location to be duly recorded in the Recorder's office in said Tonopah Mining District, Nye County, Nevada, in Book "B" records of said District at page 119 thereof, and in the Recorder's office of Nye County, State of Nevada, in Book "E" of mining locations, pages 123-124.

And this affiant further says: That on or about the seventeenth day of May, 1902, Jerome P. Porter, one of the owners aforementioned, filed an additional and amended certificate of location of the said "Dave Lewis Hope" claim and changed the name thereof to "Mizpah Intersection"; that at the time of filing said additional and amended certificate of location the said claim was duly surveyed and posts set at prescribed points on the boundaries as fully appear in the additional and amended

certificate of location, a duly certified copy whereof is hereto annexed, marked exhibit "C," and hereby made a part of this affidavit; that the said boundaries as set forth in the additional and amended certificate of location conform to the boundaries of the original location; that said additional and amended certificate of location was recorded in the recorder's office in said Tonopah Mining District, County of Nye, State of Nevada, in book "C," records of said District, at pages 394, 395, and in the County Recorder's office of Nye County, State of Nevada, in book "E" of mining location, at pages 141, 142; that the said locators and their grantees, in all respects, complied with every custom, rule, regulation, requirement of the mining laws, and every rule and custom established and in force in said Tonopah Mining District, and thereby became and were owners (except as against the paramount title of the United States) and the rightful possessors of said mining claim and premises, and have continued as owners and are now owners by complying with the requirements of the statutes of the United States and of the State of Nevada.

And this affiant further says: That after the filing of the additional and amended certificate of location as aforesaid, the said Tonopah North Star Tunnel and Development Company, by and through its agents and employees, took forcible possession of said mining claim and premises and proceeded to sink a shaft thereon; that on or about the tenth day of June, 1902, the aforesaid Jerome P. Porter served or caused to be served upon the said Tonopah North Star Tunnel and Develop-

ment Company a notice of trespass in the words and figures following:

Complainants' Exhibit No. 16.

Tonopah, Nev., June 10, 1902.

To the North Star Tunnel Co., Frank Golden, Harry Ramsey, L. O. Ray, L. Blumenthal, and all whom it may concern:

You and each of you are hereby notified that you are trespassing upon the Mizpah Intersection mining claim, which was formerly the Dave Lewis Hope claim. The trespass above mentioned consists of sinking a shaft and unlawfully occupying the ground embraced in the location of the said Mizpah Intersection mining claim.

Thomas W. Chandler, Mary Thompson, and the undersigned are the lawful owners of the above mining claim, and this is to give you notice that the owners of said claim will hold you liable for damages for the unlawful occupation and retention of said claim from the rightful owners.

JEROME P. PORTER.

That notwithstanding said protest and notice, the Tonopah North Star Tunnel and Development Company, through its agents and employees, have continued in forcible possession of said mining claim and premises, and did refuse to permit the lawful owners thereof, the said Porter, Chandler, Jury, Thompson, and affiant, to have a survey made of their said claim and property, although the said owners have the possession which the

law imputes to the holder of the legal title; that the original locators Lewis and Carr sold and conveyed their respective interests in said Dave Lewis Hope claim (otherwise known as Mizpah Intersection) to the said Porter, Chandler, and Thompson, who have made other transfers and conveyances, so that at the present time the legal title to the property in dispute is vested in the said Porter, Jury, Chandler, Thompson, and affiant, which several transfers and conveyances will appear by reference to the certified abstract of title from the office of the County Recorder for Nye County, State of Nevada, marked Exhibit "D," hereto annexed and hereby made a part of this affidavit.

And this affiant further says: that the said Ivanpah quartz mine, vein, lode or mineral deposit, as shown by the notice and diagram posted on said claim, and a copy thereof filed in the United States Land Office at Carson City, Nevada, with said Tonopah North Star Tunnel and Development Company's application for patent, embraces a large and substantial part of the Dave Lewis Hope claim (otherwise known as Mizpah Intersection) which is the property of the said Porter, Jury, Chandler, Thompson, and affiant, as fully appears by reference to the diagram or plat marked exhibit "E," hereto annexed and made a part of this affidavit, which diagram or plat shows the relative situation or position of the Dave Lewis Hope claim (otherwise known as Mizpah Intersection) and of the pretended Ivanpah lode.

And this affiant further says: That he, and his co-owners aforesaid are informed and believe that the said

Tonopah North Star Tunnel and Development Company, applicant for patent, well knew that the said Porter, Jury, Chandler, Thompson, and affiant were the owners of said vein or lode and premises, and were and are entitled to the peaceful possession thereof, and that the said Porter, Chandler, Thompson, and affiant had not forfeited, abandoned or surrendered the same.

And this affiant further says: That this protest is made in entire good faith, and with the sole object of protecting the legal rights and the property of the said Porter, Jury, Chandler, Thompson, and affiant in the said Dave Lewis Hope (otherwise known as Mizpah Intersection) lode and mining premises.

CHARLES J. CARR.

Subscribed and sworn to before me this 14th day of November, A. D. 1903.

[Seal]

R. B. TREAT,

Notary Public in and for the City and County of San Francisco, State of California.

Exhibit "B."

CERTIFIED COPY OF NOTICE OF LOCATION OF
AUGUST 26, 1901.

Notice is hereby given that the undersigned has this day located fifteen hundred linear feet on this vein or lode, supposed to run in a northwest and south E. direction with three hundred feet on each side of the vein. Commencing at this monument and running one thousand feet in a southeasterly direction and five hundred feet in a northwesterly direction. This mine is situated

in the hill or mountain east of the group of mines known as the Tonopah Mines, owned by J. L. Butler and Co.

This mine shall be known as the Dave Lewis Hope. Situated in Tonopah Mining District, Nye County, Nevada. Dated Aug. 26, 1901.

Locators: DAVE R. LEWIS.

CHAS J. CARR.

750 feet each.

Recorded Sept 2, 1901, in Book "E" of Min. Loc., p. 123-124, Nye Co., Nev. Records.

State of Nevada,
County of Nye,—ss.

I, W. J. Rice, county recorder of Nye County, Nevada, do hereby certify that the foregoing is a true and correct copy of the Loc. Cert. of the Dave Lewis Hope Mine as the same appears of record in my office in Book "E" of Min. Loc., pp. 123-4 thereof.

Witness my hand and official seal this 9th day of February, A. D. 1903.

[Seal]

W. J. RICE,
County Recorder.

Exhibit "C."

CERTIFIED COPY OF ADDITIONAL AND
AMENDED CERTIFICATE OF LOCATION

FILED MAY 17, 1902.

Additional and Amended Certificate of Location "Mizpah Intersection."

Know all men by these presents that the undersigned

Jerome P. Porter, a citizen of the United States, has this 17th day of May, 1902, amended, located, and claimed, and by these presents does amend, locate and claim by the right of the original discovery, and the location thereof made such deeds, transfers or conveyances as may have been made, and this amended certificate made, filed and recorded as provided by Federal laws and by the laws of the State of Nevada now in force, and local customs and rules fifteen hundred linear feet, on this lode, vein, ledge or deposit, bearing gold, silver, lead, copper and other valuable minerals, with all its dips, angles, and variations as allowed by law. Together with three hundred feet on each side of the middle of said vein at the surface, and all veins, lodes, ledges or deposits and surface ground within the lines of said claim.

This said lode was originally located by D. R. Lewis and Chas. J. Carr on the 26th day of August, 1901, and named the Dave Lewis Hope, by which name it is found of record in Book E of Mining Location, pages 123 and 124, Nye County, Nevada Records. It is also found in Book B, page 119, Records of Tonopah Mining District, said County and State, the name of this lode in future will be the Mizpah Intersection, the date of this amended location is made the 17th day of May, 1902. The name of the amending locator is Jerome P. Porter. From the point of the discovery shaft there is claimed by me one thousand feet in a southeasterly direction, and five hundred feet in a northwesterly direction, along the course of said lode or vein, the general course of

this vein is north 8° west by south 8° east. The discovery shaft or its equivalent is situated upon the claim eight hundred feet south from the north end center, and exposes the ledge at a depth of fully ten feet; its dimensions are 5 by 8 by 10 feet deep. This further additional and amended certificate is made and filed without waiver of any previously acquired and existing rights in and to said mining claim, but for the purpose of correcting any errors or omissions in the original location, or location certificate, description, or record; and for the purpose of securing the benefits of the Act of the Legislature of the State of Nevada, Approved March 16th, 1897. And the amendments thereto. And of conforming to the requirements of law. The amending locator hereto is the original locator or lawful grantee deriving title and right of possession from them by deed of conveyance. This said location is described by metes and bound as follows, to wit: Commencing at apex of hill at post of monument, and running north 8° west, five hundred feet to center end post marked N. end center Mizpah Intersection, thence three hundred feet west 8° south to the northwest corner post marked N. W. corner Mizpah Intersection, thence seven hundred and fifty feet south 8° east to the west center side line post marked W. center side line Mizpah Intersection, thence 750 feet south 8° east to southwest corner, marked SW. corner Mizpah Intersection, thence three hundred feet east 8° north to south center end post marked south center end line Mizpah Intersection, thence three hundred feet east 8° north to southeast corner post marked

S. E. corner post Mizpah Intersection, thence 750 feet north 8° west to east center side line marked E. center side line Mizpah Intersection, thence seven hundred and fifty feet north 8° west to northeast corner post marked NE. center post Mizpah Intersection, thence three hundred feet west 8° south to north center end post marked N. center end post Mizpah Intersection, thence five hundred feet south 8° east to the point of beginning.

Locator: JEROME P. PORTER.

Witness: J. D. LATHROP.

R. A. VAUGHN.

Filed for record June 12th, 1902, at 12:15 P. M., R. C. Gordon, M. R. W. B. Sollender, Acting Recorder.

I hereby certify that the above is a correct copy of the additional and amended certificate of location of the "Mizpah Intersection" Mining Claim recorded in Book C, pages 394 and 395 of the Tonopah Mining Records.

WM. J. LANDERS,

Recorder Tonopah Mining District.

CERTIFIED ABSTRACT OF TITLE.

NOTICE OF LOCATION OF DAVE LEWIS HOPE.

Notice is hereby given that the undersigned has this day located fifteen hundred *linear* feet on this vein or lode, supposed to run in an northwest and south E. direction with three hundred feet on each side of the vein. Commencing at this monument and running one thousand feet in a southeasterly direction, and five hundred feet in a northwesterly direction. This mine is

situated in the hill or mountain east of the group of mines known as the Tonopah Mines, owned by J. L. Butler and Co.

This mine shall be known as the Dave Lewis Hope.

Situated in Tonopah Mining District, Nye Co., Nevada.

Dated Aug 26, 1901.

Locators: DAVE R. LEWIS.

CHAS. J. CARR.

750 feet each.

Recorded at request of T. T. Egan, Sept 2, 1901, at 3 P. M.

W. BROUGHER,

Co. Recorder.

ADDITIONAL AND AMENDED CERTIFICATE OF LOCATION.

Know all men by these presents: That the undersigned citizen of the United States, has this 17th day of May, 1902, amended, located and claimed, and by these presents does amend, locate and claim, by right of the original discovery and the location heretofore made, such deeds, transfers or conveyances as may have been made, and their amended certificate made, filed and recorded, as provided by federal law and by the laws of the State of Nevada now in force and local customs and rules fifteen hundred linear feet, on this lode, vein, ledge or deposit, bearing gold, silver, lead, copper and other valuable minerals, with all its dips,

angles and variations as allowed by law, together 300 feet on each side of the middle of said vein at the surface and all veins, lodes, ledges, or deposits and surface ground, within the lines of said claim. This said lode was originally located by D. R. Lewis and Chas. J. Carr on the 26th day of August, 1901, and named the Dave Lewis Hope by which name it is found of record in Book E of Mining Locations, pages 123 and 124, Nye County Nevada Records. It is also found in Book B, page 119, Records of Tonopah Mining District, said County and State. The name of this lode in future

Added at request of J. P. Porter, June 9, 1902.

will be the Mizpah Intersection. The date of this amended location is made the 17th day of May, 1902. The name of the amending locator is Jerome P. Porter. From the discovery point at the discovery shaft, there is claimed by me 1,000 feet in a southeasterly direction and five hundred feet in a northwesterly direction, along the course of said lode or vein, the general course of this vein is N. 8° W. by south 8° east.

The discovery shaft or its equivalent is situated upon the claim 800 feet south from the north end center and exposes the ledge at a depth of fully ten feet; its dimensions are 5 by 8 by 10 ft. deep.

This further additional and amended certificate of location is made and filed without waiver of any previously acquired and existing rights in and to said mining claim but for the purpose of correcting any errors or omissions in the original location or location certificate, description

or record, and for the purpose of securing the benefits of the act of the Legislature of the State of Nevada, approved March 16, 1897, and the amendments thereto; and of conforming to the requirements of law, the amending locator hereto is the original locator or lawful grantee, deriving title and right of possession, by deed of conveyance. This said location is described by metes and bounds as follows to wit: Commencing at apex of hill at post or monument and running north 8° west five hundred feet to center end post marked N. end center Mizpah Intersection, thence three hundred feet west 8° south to the N.

W. corner post, marked N. W. corner Mizpah Intersection, thence seven hundred and fifty feet south 8° east to the west center side line post, marked W. center side line, Mizpah Intersection, thence 750 feet south 8° east to

Added at request of J. P. Porter, June 9, 1902.

southwest corner post marked S. W. corner Mizpah Intersection thence three hundred feet east 8° north to south center end post marked south center end line Mizpah Intersection, thence three hundred feet east 8° north to southeast corner post marked S. E. corner post Mizpah Intersection, thence 750 feet north 8° west to east center side line marked E. center side line Mizpah Intersection, thence seven hundred and fifty feet north 8° west to northeast corner post marked NE. corner post Mizpah Intersection, thence three hundred feet west 8° south to north center end post marked N. center end post Mizpah Intersection, thence five hundred feet south 8° east to the point of beginning.

Locator: JEROME P. PORTER.

Witness: J. D. LOTHROP,
R. A. VAUGHN.

Recorded at request of J. P. Porter, May 17, 1902, at 2
oc'k P. M.

W. BROUGHER,
Co. Recorder,
By Thos. Warburton,
Deputy.

DEED.

Chas. Jr. Carr to T. W. Chandler & Mary Thompson.
Dated April 12, 1902. Consideration \$1000.00. Conveys:
An undivided one Fourth of the Lewis Hope Mining
Claim; also 1/4 interest in and to the Midway Mining
Claim. Acknowledged April 12, 1902, before James L.
King, Commissioner for the State of Nevada, San Fran-
cisco, Cal. Recorded April 10, 1902, in Book O of Deeds,
pages 502-504, Records of Nye County, Nevada. W.
Brougher, Recorder, Thos. Warburton, Deputy.

DEED.

C. J. Carr to Thomas W. Chandler. Dated May 8, 1902.
Consideration, \$10.00. Conveys: An undivided one-quar-
ter interest in and to the Lewis Hope Mining Claim. Ac-
knowledged May 8, 1902, before James L. King, Commis-
sioner for the State of Nevada, San Francisco, Cal. Re-
corded, May 19, 1902, in Book O of Deeds, page 563, 564,
Records of Nye County Nevada. W. Brougher, Recorder,
Thos. Warburton, Deputy.

DEED.

David R. Lewis and Chas. J. Carr, D. R. Lewis, Atty. in fact, to Jerome P. Porter. Dated May 15, 1902. Consideration \$5,500.00. Conveys: All the Lewis Hope Mining Claim, sometimes called The Dave Lewis Hope Claim. Signed by D. R. Lewis only. Acknowledged May 15, 1902, before L. O. Ray, Justice of the Peace, Ray, Nye County, Nevada. Recorded May 19, 1902, in Book O of Deeds, pages 577 to 579, Records of Nye County, Nevada. W. Brougher, Recorder. By Thos. Warburton, Deputy.

DEED.

D. R. Lewis to Jerome P. Porter. Dated May 19, 1902. Consideration, \$5.00. Conveys: An undivided one-quarter interest of the Dave Lewis Hope Mine, situate in Tonopah Mining District, Nye County, Nevada. Acknowledged May 12, 1902, before L. O. Ray, Justice of the Peace for Town of Ray, Nevada, acting for J. P. of Tonopah. Recorded May 24, 1902, in Book O of Deeds, pages 591, 593, Records of Nye County, Nevada. W. Brougher, Recorder. By Thos. Warburton, Dept.

DEED.

Jerome P. Porter to Thos. W. Chandler & Mary Thompson. Dated May 23, 1902. Consideration \$10.00. Conveys: The Mizpah Interception Mine, *formally* known as Dave Lewis Hope Mine. Conveys an undivided one-half. Acknowledged May 24, 1902. Before Clay Peters, Justice of the Peace, Tonopah, Nev. Recorded May 27, 1902 in Book P. of Deeds, pages 4-6, Records of Nye County,

Nevada. W. Brougher, Recorder. By Thos. Warburton, Dept.

DEED.

Mary Thompson, Thos. W. Chandler to C. J. Carr, John G. Jury. Dated June 14, 1902. Consideration \$10.00. Conveys: An undivided one fourth interest in and to the Mizpah Intersection *formally* known as the Dave Lewis Hope Mining Claim. Acknowledged June 19, 1902, before R. B. Treat, Notary Public in and for County & City of San Francisco, Cal. Recorded Nov. 11, 1902, in Book P. of Deeds, pages 513-515, Records of Nye County, Nevada. Thos. Warburton, Recorder.

DEED.

D. R. Lewis to R. B. Davis. Dated June 28, 1902. Consideration \$1.00. Conveys: All his right title and interest in and to the Dave Lewis Hope Quartz Claim. Acknowledged June 30, 1902, before J. R. Duffield, Notary Public in and for Nye County, Nevada. Recorded July 3, 1902, in Book P. of Deeds, page 68-69, Records of Nye County, Nevada. W. Brougher, Recorder. By Thos. Warburton, Deputy.

ASSIGNMENT.

Lothrop & Davis to F. W. Williams. Dated Oct. 29, 1903. Consideration \$———. Conveys: All Property owned by them or either of them including all mining property, stocks, etc. Acknowledged August 29, 1903, before Hugh H. Brown, Notary Public in and for Nye County, Nevada. Recorded Sept. 28, 1903, in Book R. of

Deeds, pages 111-113, Records of Nye County, State of Nevada. W. J. Rice, Recorder.

State of Nevada,
County of Nye,—ss.

I, W. J. Rice, County Recorder of Nye County, State of Nevada, do hereby certify that the foregoing is a full, true and correct abstract of title of The Dave Lewis Hope Mining Claim situate in Tonopah Mining District, Nye Co. Nev., Nye County, Nevada, as the same appears of record in my office.

Witness my hand and official seal this 23d day of Oct., 1903.

[Seal]

W. J. RICE,
County Recorder, Nye County, State of Nevada.

By W. H. Cowan,
Deputy.

[Endorsed]: Abstract of Title of Dave Lewis Hope Mining Claim.

T. 31 N. R. 42 E.

Sec 35



Scale 200 feet to the inch
Exhibit 'E'

Red lines represent the boundaries of the "Dave Lewis Hope" Claim



DEPARTMENT OF THE INTERIOR.

United States Land Office,

Carson City, Nevada, July 11, 1904.

I hereby certify that the foregoing is a full, true and correct copy of Adverse Claim No. 121, filed in the matter of the application of the Tonopah North Star Tunnel and Development Company for patent for the Ivanpah mining claim, now on file in my office.

O. H. GALLUP,
Register.

Know all men by these presents, that we, Jerome P. Porter, Thos. W. Chandler, John G. Jury, Chas. J. Carr, and Mary Thompson, have made, constituted and appointed, and by these presents do make, constitute and appoint Schuyler Duryee our attorney in fact, for us and each of us, and in our names, to make application to the United States for the patent of certain mining lands in Tonopah Mining District, Nye County, State of Nevada, described as follows:

That certain mining claim located originally as the Dave Lewis Hope Mine according to location thereof made on the 26th day of August, 1901, certificate of said location having been duly recorded in Book "E" of Mining Locations, pages 123 and 124, Records of Nye County, State of Nevada, and also in Book "B," page 119, Mining District Records of Tonopah, Nye County, Nevada; and according to an amended location of said mining claim, wherein the same claim is located by such amended notice,

and designated therein as the Mizpah Intersection Mining Claim, as appears from the record thereof, in Book "F," of Mining Locations, at pages 141 and 142, Records of Nye County, State of Nevada.

And the said Schuyler Duryee is hereby authorized to have the same surveyed, and to take all and any steps that may be necessary to procure from the government of the United States, a patent to the said lands and premises, granting the same to us, and further to adverse any and all claims upon said lands, or any part thereof, in conflict with our rights therein; to commence and prosecute any action or actions against any and all adverse claims and claimants; and in this behalf, to file protests and adverse claims upon any application for patent pending upon said land by adverse claimants, complaints and all other documents or papers necessary for the complete and effectual determination of the rights of the undersigned in and to said mining claim and every part thereof.

In witness whereof, we have hereunto set our hands and affixed our seals this 3d day of November, 1903.

JEROME P. PORTER.

THOS. W. CHANDLER.

JOHN G. JURY.

CHAS. J. CARR.

Mrs. MARY THOMPSON.

State of California,

City and County of San Francisco,—ss.

On this 3d day of November, 1903, before me R. B. Treat, a Notary Public, duly commissioned and sworn,

personally appeared, Thos. W. Chandler, John G. Jury, Chas. J. Carr and Mrs. Mary Thompson, known to me to be the same persons whose names are subscribed to the within instrument, and they duly acknowledged to me that they executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office, in the City and County of San Francisco, State of California, the day and year first above written.

[Seal] R. B. TREAT,
Notary Public in and for the City and County of San
Francisco, State of California.

State of California,
County of Calaveras,—ss.

On this 9th day of November, 1903, before me, Lewis J. Hutchinson, a Notary Public duly commissioned and sworn, personally appeared, Jerome P. Porter, known to me to be the same person whose name is subscribed to the within instrument, and he duly acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my Official Seal in the town of Angels Camp, in the County of Calaveras, State of California, the day and year first above written.

[Seal] LEWIS J. HUTCHINSON,
Notary Public in and for the County of Calaveras, State
of California.

[Endorsed]: No. 121. Power of Attorney. Jerome P. Porter et al. to Schuyler Duryee. U. S. Land Office, Carson City, Nevada. Filed Nov. 17, 1903. O. H. Gallup, Register. Schuyler Duryee, Grand Hotel, San Francisco, Calif. No. 771. U. S. Cir. Court, Dist. of Nevada. Jerome P. Porter et al. v. Tonopah North Star Tun. & Development Co. Certified Copy of Adverse Claim. Complainant's Exhibit No. 7. Filed July 13th, 1904. T. J. Edwards, Clerk.

Complainants' Exhibit No. 8.

This indenture made the twelfth day of April, A. D. 1902, between Charles J. Carr, of Tonopah, Nye County, State of Nevada, the party of the first part, and Thomas W. Chandler of San Francisco, California, and Mary Thompson (widow) of Berkeley, Alameda County, State of California, the parties of the second part,

Witnesseth: That the said party of the first part, for and in consideration of the sum of one thousand (\$1000.00) dollars, gold coin of the United States of America, to him in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release and forever quitclaim unto the said parties of the second part and to their heirs and assigns an undivided one-fourth ($\frac{1}{4}$) interest of, in and to that certain mining property known as and called the Midway Mining Claim situated, lying

or being in Tonopah or Butler, in the County of Nye, State of Nevada; Also an undivided one-fourth ($\frac{1}{4}$) interest of, in and to that certain mining claim known as and called the Lewis Hope Mining Claim situate, lying and being in Tonopah or Butler, Nye County, State of Nevada. Together with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and, also, all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and, also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances.

To have and to hold, all and singular the said premises, together with the appurtenances and privileges thereunto incident, unto the said parties of the second part.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

C. J. CARR. [Seal]

Signed, sealed and delivered in the presence of

HENRY C. DROGER.

State of California,
City and County of San Francisco,—ss.

I, James L. King, a Commissioner for the State of Nevada, duly commissioned and qualified under and by virtue of the laws thereof, residing in the City and County of San Francisco, and State of California, do hereby certify that on the twelfth day of April, A. D. nineteen hundred and two, before me, personally appeared Charles J. Carr, personally known to me to be the person whose name is subscribed to the annexed instrument as party thereto, and to be the individual described in and who executed the said instrument. And the said Charles J. Carr duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal as such Commissioner, at my office in the City and County of San Francisco, State of California, the day and year in this certificate first above written.

[Seal]

JAMES L. KING,

Commissioner for the State of Nevada, in San Francisco,
California, 308 California Street, San Francisco,
Cal.

[Endorsed]: Deed of Mining Claim. Charles J. Carr to Thos. W. Chandler and Mary Thompson. Dated April 12th, A. D. 1902. Recorded at the request of Mary Thompson. Apr. 18, A. D. 1902, at 10 min. past 8 o'clock A. M., in Vol. O of Deeds, pages 503/4, Nye County Rec-

ords. W. Brougher, County Recorder. By Thos. Warburton, Deputy Recorder. Fees, \$3.50.

No. 771. U. S. Cir. Court, Dist. of Nevada. Jerome P. Porter et al v. Tonopah North Star Tunnel & Development Co. Complainants' Exhibit No. 8. Filed July 13, 1904. T. J. Edwards, Clerk.

Complainants' Exhibit No. 9.

This indenture, made the eighth day of May, A. D. 1902, at the hour of 3:30 o'clock P. M. of said day between C. J. Carr, of Berkeley, Alameda County, State of California, the party of the first part, and Thomas W. Chandler, of the same place, the party of the second part,

Witnesseth: That the said party of the first part, for and in consideration of the sum of ten (\$10.00) dollars, gold coin of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release and forever quitclaim, unto the said party of the second part and to his heirs and assigns an undivided one-quarter (1/4) interest of, in and to that certain mining claim known as and called the "Lewis Hope Mining Claim," situated in Tonopah, County of Nye, State of Nevada. Together with all the dips, spurs and angles, and also all the metals, ores, gold and silver

bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining and the rents, issues and profits thereof; and, also, all the estate, right, title, interest, property possession claim and demand whatsoever as well in law as in equity of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances.

To have and to hold, all and singular the said premises, together with the appurtenances and privileges thereunto incident, unto the said party of the second part.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

C. J. CARR. [Seal]

Signed, sealed and delivered in the presence of

HENRY C. DROGER.

JAMES L. KING.

State of California,

City and County of San Francisco,—ss.

I, James L. King, a Commissioner for the State of Nevada, duly commissioned and qualified under and by virtue of the laws thereof, residing in the City and County of San Francisco, and State of California, do

hereby certify that on the eighth day of May, A. D. nineteen hundred and two, before me, personally appeared C. J. Carr, personally known to me to be the person whose name is subscribed to the annexed instrument as party thereto, and to be the individual described in and who executed the said instrument. And the said C. J. Carr duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal as such Commissioner, at my office in the City and County of San Francisco, State of California, the day and year in this certificate first above written.

[Seal]

JAMES L. KING,

Commissioner for the State of Nevada, in San Francisco, California, 308 California Street, San Francisco, Cal.

[Endorsed]: Deed of Mining Claim. C. J. Carr to Thomas W. Chandler. Dated May 8th, A. D. 1902. Recorded at the request of Thos. W. Chandler, May 19, A. D. 1902, at — min. past 8 o'clock A. M., in Vol. "O" of Deeds, page 563/4, Nye Co. Records. W. Brougher, County Recorder. By Thos. Warburton, Deputy Recorder. Fees, \$3.00.

No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. v. Tonopah North Star Tunnel & Development Co. Complainants' Exhibit No. 9. Filed July 13th, 1904. T. J. Edwards, Clerk.

Complainants' Exhibit No. 10.

This indenture, made the fifteenth day of May, A. D. 1902, between David R. Lewis of Tonopah, Nye County, Nevada, the party of the first part, and Jerome P. Porter, of the City and County of San Francisco, California, the party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of fifty-five hundred dollars, money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents do grant, bargain and sell unto the said party of the second part, and to his heirs and assigns, that certain mine or mining claim in Tonopah Mining District, Nye County, State of Nevada, known as the Lewis Hope Mine, and sometimes known as and called the Dave Lewis Hope Mine, comprising a lode claim 1500x600 feet, located August 26th, 1901, in the names of Dave Lewis and Charles Carr, the notice of such location being recorded in the Recorder's office of said Nye County, in Book E of mining locations, pages 123 and 124. Together with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also, all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and, also, all the estate, right, title, interest, property,

possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances.

It is distinctly understood that a good title to the whole of said claim or mine, free and clear of any and all cloud or question is the consideration for the making of such payment of fifty-five hundred dollars.

To have and to hold, all and singular the said premises, together with the appurtenances and privileges thereunto incident, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

D. R. LEWIS. [Seal]

Signed, sealed and delivered in the presence of

R. R. VAUGHN.

HERMAN REISCHKE.

J. D. LOTHROP.

State of Nevada,
County of Nye,—ss.

On this 15th day of May, in the year one thousand nine hundred and two, before me, L. O. Ray, Justice of the Peace for Ray, Nye County, Nevada, personally appeared D. R. Lewis, known to me to be the same person whose name is subscribed to the within instrument, and who duly acknowledged to me that he executed the same

freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in Ray the day and year in this certificate first above written.

[Seal]

L. O. RAY,

Justice of the Peace for Ray, Nye County, Nevada.

[Endorsed]: Deed of Mining Claim. David R. Lewis to Jerome P. Porter. Dated May 15, A. D. 1902. Recorded at the request of J. P. Porter, May 19, A. D. 1902, at 50 min. past 8 o'clock A. M., in Vol. "O" of Deeds, page 576/577, Nye Records. W. Brougher, County Recorder. By Thos. Warburton, Deputy Recorder.

No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. v. Tonopah North Star Tun. & Development Co. Complainants' Exhibit No. 10. Filed July 13th, 1904. T. J. Edwards, Clerk.

Complainants' Exhibit No. 11.

This indenture, made the fourteenth day of June, A. D. 1902, between Thomas W. Chandler and Mrs. Mary Thompson (feme sole), both of Berkeley, California, the parties of the first part, and Charles J. Carr, John G. Jury, the parties of the second part,

Witnesseth: That the said parties of the first part, for and in consideration of the sum of ten dollars (\$10), gold coin of the United States of America, to them in hand paid by the said parties of the second part, the

receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, and forever quit-claimed, and by these presents do grant, bargain, sell, remise, release and forever quitclaim, unto the said parties of the second part, and to their heirs and assigns an undivided one-fourth interest in and to that certain mining claim, and location known and located originally as the Dave Lewis Hope Mining Claim, and subsequently located by amended notice as the Mizpah Intersection Mining Claim, situated in Tonopah Mining District, Nye County, State of Nevada. Together with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein; and all rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also, all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and, also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances.

It is agreed by all parties hereto that the interest of the parties hereto shall be as follows: Charles J. Carr, an undivided one-eighth; Thomas W. Chandler, an undivided one-eighth; Mrs. Mary Thompson, an undivided one-eighth, and John G. Jury an undivided one-eighth, and further that neither of the parties hereto will sell, dispose of or encumber his or her said interest, or any

part thereof, without the first obtaining the written consent of all other parties hereto.

To have and to hold, all and singular the said premises, together with the appurtenances and privileges thereunto incident, unto the said parties of the second part.

In witness whereof the said parties hereto have hereunto set their hands and seals the day and year first above written.

THOS. W. CHANDLER.
MARY THOMSON.

Signed, sealed and delivered in the presence of

R. B. TREAT.

State of California,
City and County of San Francisco,—ss.

On the 19th day of June, in the year nineteen hundred and two, before me, R. B. Treat, a notary public in and for the said city and county, residing therein, duly commissioned and sworn, personally appeared Thomas W. Chandler, known to me to be the person described in, whose name is subscribed to and who executed the annexed instrument, and he acknowledged that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the city and county of San Francisco, the day and year in this certificate first above written.

[Seal]

R. B. TREAT,

Notary Public in and for the City and County of San Francisco, State of California, Parrott Building.

State of California,
City and County of San Francisco,—ss.

On the 14th day of June in the year nineteen hundred and two, before me, R. B. Treat, a notary public in and for the said city and county, residing therein, duly commissioned and sworn, personally appeared Mary Thompson, unmarried, known to me to be the person described in, whose name is subscribed to and who executed the annexed instrument, and she acknowledged that she executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the city and county of San Francisco, the day and year in this certificate first above written.

[Seal]

R. B. TREAT,

Notary Public, in and for the City and County of San Francisco, State of California, Parrott Building.

[Endorsed]: Recorded at request J. G. Jury, Nov. 11, 1902, at 30 min. past 8 A. M. Book "P" of Deeds, page 513/15, Nye County, Nevada, Records. Thos. Warburton, Recorder. Deed. Thomas W. Chandler et al., to Charles J. Carr et al. Dated June 14th, 1902. Fees \$4.00.

No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tun. & Development Co. Complainants' Exhibit No. 11. Filed July 13th, 1904. T. J. Edwards, Clerk.

Complainants' Exhibit No. 12.

This indenture, made the 23d day of May, A. D. 1902, between Jerome P. Porter, the party of the first part, and Thomas W. Chandler and Mary Thompson, the parties of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of ten dollars, lawful money of the United States of America, to him in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has sold, remised, released, and forever quit-claimed, and by these presents does sell, remise, release and forever quitclaim, unto the said parties of the second part, and to their heirs and assigns forever an undivided one-half of all that certain piece or parcel of land situate, lying and being in Tonopah, County of Nye, State of Nevada, bounded and described as follows,

Mizpah

to wit: an undivided one-half interest in the Dave Intersection

Lewis Hope Mine, situate in the Tonopah Mining District, Tonopah, Nye Co., State of Nevada, in the hill or mountain east of Tonopah and joining on the Mizpah

Mizpah Intersection

Mine, said Dave Lewis Hope formerly known as Dave Lewis Hope Mine, was located on the 26th day of August, 1901, and certificate of location recorded in Book E of Mining Locations, pages 123 and 124, Nye County, Nevada Records, and also in Book B, page 119, District Records, Tonopah, Nye Co., Nevada, and an additional and amended certificate of location recorded at the request of the party of the first part in Book F of Mining

Locations, page 141/2, Nye County, Nevada Records, on May 17th, 1902, together with an undivided one-half all the dips, spurs and angles, and also all the metals, ores, gold and silver-bearing quartz, rock and earth therein; and one-half rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also, all and singular the one-half tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and, also, one-half the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part of, in or to the said premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the said one-half premises, together with the appurtenances unto the said parties of the second part, and to their heirs and assigns forever. And the said party of the first part and his heirs and assigns, the fee simple title to the said premises and the quiet and peaceable possession thereof in the said parties of the second part, their heirs and assigns, against the said party of the first part, and his heirs and assigns against any and all persons, whomsoever, lawfully claiming or to claim the same shall and will quitclaim, and by these presents forever defend.

To have and to hold, all and singular the said premises, together with the appurtenances and privileges thereunto incident, unto the said parties of the second part.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

JEROME P. PORTER. [Seal]

Signed, sealed and delivered in the presence of

_____ ,

State of Nevada,
County of Nye,—ss.

On this 24th day of May in the year one thousand nine hundred and two, before me, Clay Peters, Justice of the Peace of Tonopah, Nye County, Nevada, personally appeared Jerome P. Porter, known to me to be the same person whose name is subscribed to the within instrument, and he duly acknowledged to me that he executed the same, freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in Tonopah, the day and year in this certificate first above written.

[Seal]

CLAY PETERS,

Justice of the Peace for Tonopah, Nye County, Nevada.

[Endorsed]: Deed of Mining Claim. Jerome P. Porter to Thos. W. Chandler and Mary Thompson. Dated May 23, 1902. Recorded at request of Jerome P. Porter, May 27, A. D. 1902, at 40 min. past 10 o'clock, A. M., in Vol. "P" of Deeds, page 4/6, Nye County Records. W. Brougher, Recorder. By Thos. Warburton, Deputy Recorder.

No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tun. & Development Co. Claimants' Exhibit No. 12. Filed July 13th, 1904. T. J. Edwards, Clerk.

Defendants' Exhibit "A."

ADDITIONAL AND AMENDED CERTIFICATE OF LOCATION.

Know all men by these presents, that the undersigned, Jerome P. Porter, a citizen of the United States, has this 17th day of May, 1902, amended, located and claimed, and by these presents does amend, locate, and claim by right of the original discovery, and the location heretofore made, such deeds, transfers, or conveyances as may have been made, and this amended certificate, made, filed and recorded as provided by federal law, and by the laws of the State of Nevada now in force, and local customs and rules, fifteen hundred linear feet on this lode, vein, ledge or deposit, bearing gold, silver, lead, copper and other valuable minerals, with all its dips, angles, and variations as allowed by law, together with 300 feet on each side of the middle of said vein at the surface, and all veins, lodes, ledges or deposits and surface ground within the lines of said claim.

This said lode was originally located by D. R. Lewis and Chas. J. Carr on the 26th day of August, 1901, and named the Dave Lewis Hope Lode, by which name it is found of record in Book E of mining locations, pages 123 and 124, Nye County, Nevada Records. The name of

this lode is Dave Lewis Hope. The date of this amended location is May 17th, 1902. The name of the amending locator is Jerome P. Porter.

From the discovery point at the discovery shaft or monument there is claimed by me 1,000 feet in a southerly direction and five hundred feet in a northerly direction along the course of said lode or vein. The general course of this vein is N. 8° W. by S. 8° E. The discovery shaft or its equivalent is situated upon the claim 800 feet south from the north end center, and exposes the ledge at a depth of fully ten feet; its dimensions are 5 by 8 by 10 ft. deep.

This further additional and amended certificate of location is made and filed without waiver of any previously acquired and existing rights in and to said mining claim; but for the purpose of correcting any errors or omissions in the original location, or location certificate, description or record; and for the purpose of securing the benefits of the Act of the Legislature of the State of Nevada, approved March 16th, 1897, and the amendments thereto, and of conforming to the requirements of law.

The amending locator hereto is the original locator or lawful grantee deriving title and right of possession from them. This said location is described by metes and bounds as follows, to wit: Commencing at apex of hill at post or monument running north 8° W. 500 ft. to center end post, marked north end center D. L. H.; thence 300 feet west 8° south to N. W. Cor. post, marked N. W. corner; thence 750 feet south 8° E. to west cen-

ter side line post, marked west center side line; thence 750 feet south 8° E. to S. W. corner post, marked S. W. corner; thence 300 feet E. 8° north south center end post, marked south center end line; thence 300 ft. E. 8° N. to S. E. corner post, marked S. E. corner post; thence 750 feet N. 8° W. to east center side line, marked east corner side line; thence 750 feet N. 8° W. to N. E. corner post, marked N. E. corner post; thence 300 feet west 8° S. to north center end post, marked N. center end post; thence 500 feet S. 8° E. to point of beginning.

[Endorsed]: Recorded at request of Jerome P. Porter, May 17, A. D. 1902, at — min. past 2 P. M. in Book "F" of Min. Loc., page 141/2 Nye County, Nevada Records. W. Brougher, Recorder. By Thos. Warburton, Deputy.

No. 771. U. S. Cir. Court, Dist. of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tunnel & Development Co. Add. and Amd. Certificate of Location of Dave Lewis Hope Claim. Defendants' Exhibit "A." Filed July 13, 1904. T. J. Edwards, Clerk.

Defendants' Exhibit "D."

This indenture, made the 19th day of May, in the year of our Lord, one thousand nine hundred and two, between D. R. Lewis of Tonopah, Nye Co., State of Nevada, the party of the first part, and Jerome P. Porter of San Francisco, California, the party of the second part;

Witnesseth: That the party of the first part, for and in consideration of the sum of five dollars — of the

United States of America, to him in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, do by these presents, grant, convey and quitclaim, unto the said party of the second part, and to his heirs and assigns, all that undivided one-quarter interest mining claim, situated in the Tonopah Mining District, County of Nye, State of Nevada, and bounded and described as follows, to wit: An undivided one-quarter interest of the Dave Lewis Hope mine, situated in Tonopah Mining District, in the hill or mountain east of the group of mines, known as the Tonopah mines, formerly owned by Butler & Co. This said mine was located by D. R. Lewis and Chas. J. Carr on the 26th day of August, 1901, the location was recorded Sept. 2d, 1901, in Book E of mining locations, pages 123 and 124 at Belmont, Nye County, Nevada Records.

Together with all the metals therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoined; and also, all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of in or to the said premises, and every part and parcel thereof, with the appurtenances.

To have and to hold, all and singular the said premises, together with the appurtenances and privileges thereunto incident, unto the said party of the second part.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

D. R. LEWIS. [Seal]

Signed, sealed and delivered in the presence of

E. R. KEEN.

State of Nevada,
County of Nye,—ss.

On this 19 day of May, in the year one thousand nine hundred and two, before me, Clay Peters, Justice of the Peace for Tonopah, Nye County, Nevada, personally appeared D. R. Lewis, known to me to be the same person whose name is subscribed to the within instrument, and who duly acknowledged to me that he executed the same, freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in Ray, the day and year in this certificate first above written.

L. O. RAY,

Justice of the Peace for Ray Precinct, Nye County, Nevada. Acting in absence of Justice of Peace of Tonopah precinct.

[Endorsed]: Deed of Mining Claim. D. R. Lewis to Jerome P. Porter. Dated May 19, A. D. 1902. Filed for Record at the Request of J. P. Porter, May 24, A. D. 1902, at 10 min. past 8 o'clock, A. M., and Recorded in Book "O" of Deeds, page 591/593, Nye County Records. W. Brougher, Recorder. By Thos. Warburton, Deputy

Recorder. Filed for Record, June 12th, 1902, at 12:20 P. M. Recorded in Book "C," page 393, Tonopah Mining Records. R. C. Gordon, Recorder. W. B. Sollender, Acting Recorder.

No. 771. U. S. Cir. Court, Dist of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tunnel & Development Co. Defendants' Exhibit "D." Filed July 15, 1904. T. J. Edwards, Clerk.

Defendants' Exhibit "E."

ADDITIONAL CERTIFICATE OF LOCATION.

The Tonopah North Star Tunnel and Development Company, a corporation, hereby declares and files this the additional certificate of location of the Ivanpah Lode Mining Claim, situated in the Tonopah Mining District, Nye County, State of Nevada.

Said claim was located on the 10th day of October, 1901, by Frank M. Ish, who filed his certificate of location of said claim for record in the Tonopah Mining District and the county recorder's office of said Nye County, on the 8th day of Jan., 1902. Said Ish in locating said claim, claimed seven hundred linear feet in a southerly direction and eight hundred linear feet in a northerly direction, from the point of discovery (which is definitely described herein), along said lode and three hundred feet on each side of the center thereof. That on the 15th day of July, 1902, the said Frank M. Ish, conveyed by good and sufficient deeds to the Tonopah North Star Tunnel and Development Company.

all his right, title and interest in and to said Ivanpah claim. That the Tonopah North Star Tunnel and Development Company is now the owner of and in the sole possession of said mining claim. That said mining claim is now and always has been known as the Ivanpah. That the general course of this lode and vein is a northerly and southerly direction, and has its strike on a line equal distance from the side lines thereof. That said claim is situated in section thirty-five, township three north, range forty-two E., M. D. M. The discovery cut is situated at a point north 3 degrees, east 23 minutes west 41 $\frac{5}{10}$ feet from the location and discovery monument, and it is of following dimensions. Four feet wide, twelve feet face, and fourteen feet in length on the bottom. That said cut exposes said lode for a depth of more than ten feet from the surface. All the corners not otherwise hereinafter described are marked by posts four inches square, four and one-half feet in length and set eighteen inches in the ground, with a mound of earth and stone not less than four and one-half feet in diameter at the base and three feet in height, piled up around the post. For a more complete and accurate description of said claim, the field-notes of the survey of said claim by S. K. Bradford, made on the first day of August, 1902, as hereinafter set out and signed by him on this notice as follows, to wit:

Commencing at N. E. Cor. No. 1, a pine post marked N. E. Cor. No. 1 Ivanpah, whence the N. E. Cor. of Sec. No. 35, T. 3 N. R. 42 E. M. D. M. bears N. $11^{\circ} 37' E.$ 1182.2 ft. thence S. $3^{\circ} 23' E.$ 750 ft. to E. side Cor. No.

2, a post marked E. side Cor. No. 2, Ivanpah, 1,500 ft. to S. E. Cor. No. 3, a post marked S. E. Cor. No. 3 Ivanpah; thence $86^{\circ} 37'$ W. 600 ft. to S. W. Cor. No. 4, a post marked S. W. Cor. No. 4, Ivanpah; whence Cor. No. 5, Sur. No. 2,004 Lucky Jim lode bears N. $80^{\circ} 11'$ E. 134 ft. thence N. $3^{\circ} 23'$ W. 750 ft. to W. side Cor. No. 5, a post marked W. side Cor. No. 5, Ivanpah, 1,500 ft. to N. W. Cor. No. 6, a post marked N. W. Cor. No. 6, Ivanpah; thence N. $86^{\circ} 37'$ E. 600 ft. to N. E. Cor. No. 1, place of beginning.

A post marked Loc. Dis. Ivanpah on which a copy of this amended location certificate is posted is set at N. $3^{\circ} 23'$ W. 700 ft. from the center of the south end line of this claim; said post is 4-1/2 ft. long, 4 ins. square, set 18 ins. in ground, with mound of earth and stone 4-1/2 feet in diameter at base, built up around the stone 3 feet in height. Ground in conflict with Lucky Jim not claimed by Ivanpah. This claim is adjoined on the south by the Silver State and Mizpah lodes, and on the west by the Lucky Jim and Mining Chance lode. Magnetic variation at all the corners is $16^{\circ} 52'$ E. I hereby certify that the Ivanpah lode was actually surveyed by me and that the above description is sufficient to identify the claim.

S. K. BRADFORD,
Surveyor.

In witness whereof the Tonopah North Star Tunnel and Development Company, by its Secretary, duly au-

thorized so to do, has hereunto affixed its corporate name and seal.

(Signed) TONOPAH NORTH STAR TUNNEL AND
DEVELOPMENT COMPANY.

[Seal]

By W. J. HARRIS,

Its Secretary.

[Endorsed]: Recorded at request of Key Pittman, Aug. 11, A. D. 1902, at — min. past 8 A. M., in Book "F" of Min. Loc., page 360/362, Nye County, Nevada, Records. W. Brougher, Recorder. By Thos. Warburton, Deputy. Filed for record in the Tonopah Mining District, Recorder's Office, August 20th, 1902, at 1:00 P. M. Recorded in Book "D," page "76," Tonopah, Nye County, Nevada. E. C. Gordon, Recorder. W. B. Solender, Deputy.

No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tunnel & Development Company. Add. Cert. of Location of Ivanpah Lode M'g. Claim. Defendants' Exhibit "E." Filed July 15, 1904. T. J. Edwards, Clerk.

Defendants' Exhibit "F."

No. 958.

APPLICATION FOR PATENT.

United States Land Office, Carson City, Nev.,

August 14, 1903.

Notice is hereby given that in pursuance of Chapter Six of Title Thirty-two of the Revised Statutes of the

United States the Tonopah North Star Tunnel and Development Company, a corporation, duly organized and existing under and by virtue of the laws of the State of Nevada, whose principal place of business is Tonopah, Nye County, Nevada, doing business in the County of Nye and State of Nevada, as a mining corporation, by and through Walter J. Harris, its duly appointed, qualified and acting attorney in fact, whose postoffice address is Carson City, Ormsby County, Nevada, has this day filed its application for a United States Patent for fifteen hundred (1,500) linear feet of the Ivanpah quartz mine, vein, lode or mineral deposit, bearing gold and silver, together with surface ground three hundred (300) feet in width on each side of the center of said lode or vein, lying, being and situate within the Tonopah Mining District, County of Nye, State of Nevada; which is more fully described as to metes and bounds by the official plat and approved field notes of survey thereof, now on file in this office, designated as United States Mineral Survey No. 2053, in section 35, township No. 3, north, range 42 E. M. D. M., as follows, to wit: Beginning at Cor. No. 1, a pine post 4 1/2 feet long, 4 ins. square set 18 ins. in the ground, scribed 1-2053 Cor. Loc. bears north 3° 24' west 38 feet the N. E. Cor. section 35, township 3 north, range No. 42 E. M. D. M., bears north 11° 14' east 1,218 feet. Thence south 3° 24' east 751.4 feet Cor. No. 2, a pine post 4 1/2 feet long, 4 ins. square set 18 ins. in the ground, scribed 2-2053, identical with the east side center of the location 1363.5 feet intersect line 4-5 Sur.

No. 2031, Silver State lode south $78^{\circ} 47'$ east 204.4 feet from Cor. No. 5 1,500 feet. Cor. No. 3, a pine post $4\frac{1}{2}$ feet long, 4 ins. square set 18 ins. in the ground, scribed 3-2053, identical with the S. E. Corner of the location. Thence south $86^{\circ} 39'$ west 192.5 feet intersect line 2-3 Sur. No. 2012, Mizpah lode south $5^{\circ} 07'$ east 19.3 feet from Cor. No. 2, line 1-5 Sur. No. 2031, south $5^{\circ} 07'$ east 188.1 feet from Cor. No. 5, Sur. No. 2031, 600.0 feet Cor. No. 4, a pine post $4\frac{1}{2}$ feet long 4 ins. square set 18 ins. in the ground, scribed 4-2053, identical with the S. W. Cor. of the location. Thence north $3^{\circ} 24'$ west 6.7 feet intersect line 1-2 Sur. No. 2012, Mizpah lode, south $84^{\circ} 53'$ west, 407 feet, from Cor. No. 2, identical with south side line Triangle lode survey 74, 6 feet intersect line 3-4 Sur. No. 2004, Lucky Jim lode north $84^{\circ} 43'$ west 153.1 feet from Cor. No. 3, 639.4 feet intersect north line Sur. No. 2004 north $84^{\circ} 43'$ west 335 feet from Cor. No. 1, 748.6 feet Cor. No. 5 a pine post $4\frac{1}{2}$ feet long, 4 ins. square, set 18 ins. in the ground scribed 5-2053 identical with west side center of location 1063.5 feet intersect south end line of Mining Chance lode south $70^{\circ} 18'$ west 142.3 feet from S. E. Cor. No. 3, 1500 feet Cor. No. 6, a pine post $4\frac{1}{2}$ feet long, 4 ins. square set 18 ins. in the ground scribed 6-2053 when the N. W. Cor. of the location bears north $3^{\circ} 24'$ west 38 feet. Thence north $86^{\circ} 39'$ east 22.1 feet intersect east side line of Mining Chance lode north $19^{\circ} 28'$ west 412.5 feet from S. E. Cor. No. 3, 300 feet to a point whence the location notice bears south $3^{\circ} 24'$ east 800.4 feet a pine post $4\frac{1}{2}$ feet long, 4 ins.

square, set 18 ins. in the ground, scribed Loc. 2053, identical with the Loc. monument of the location. The discovery cut bears south $3^{\circ} 24'$ east 758.4 feet, 600 feet Cor. No. 1, the place of beginning, containing 2066 acres. Less area in conflict with Mining Chance lode, surveyed .79, less area in conflict with Sur. No. 2004, Lucky Jim lode 3.42, less area in conflict with Sur. No. 2031 Silver State Lode .72, less area in conflict with Sur. No. 2012 Mizpah lode .12. The Triangle lode surveyed 1.70. Leaving a net area claimed of 13.91 acres. The magnetic variation at all the corners is $16^{\circ} 52'$ east. Substantial monuments of earth and stone $4 \frac{1}{2}$ feet at the base and 2 feet high are erected at all the corners around the posts; and pine posts 2 feet long, 4 ins. square and 2 ins. by 4 ins. are set 12 ins. in the ground at all the intersections properly scribed with the intersecting lines, numbers of surveys or name of the claim. Expressly excluding all that portion of the Mining Chance lode in conflict with survey No. 2053 described as follows: Beginning at Cor. No. 6 Sur. No. 2053, thence north $86^{\circ} 39'$ east 22.1 feet intersect east line of the Mining Chance lode. Thence south $19^{\circ} 28'$ east 412.5 feet S. E. Cor. No. 3 Mining Chance lode. Thence south $70^{\circ} 18'$ west 142.3 feet intersect line 5-6 Sur. No. 2053. Thence north $3 \text{ deg. } 24'$ west 436.5 feet Cor. No. 6, the place of beginning, containing 0.79 acres. Also expressly excluding all that portion of the Lucky Jim lode Sur. No. 2004 in conflict with Sur. No. 2053, described as follows: Beginning at the intersection of the north side line of Sur. No. 2004 with line 4-5 Sur. No. 2053,

thence south 84 deg. 43' east 335.0 feet Cor. No. 1, Sur. No. 2004, thence south 6 deg. 41' west 298.2 feet Cor. No. 2, Sur. No. 2004, thence south 24 deg. 20' west 275.6 feet Cor. No. 3, Sur. No. 2004, thence north 84 deg. 43' west 151.1 feet intersect line 4-5 Sur. No. 2053, north 3 deg. 24' west 74.6 feet from Cor. No. 4, thence north 3 deg. 24' west 564.8 — to point of intersection, the place of beginning, containing 3.42 acres.

Also expressly excluding all that portion of the Silver State lode, Sur. No. 2031, in conflict with Sur. No. 2053 described as follows: Beginning at Cor. No. 3, Sur. No. 2053, thence north 3 deg. 24' west 136.5 feet intersect line 4-5 Sur. No. 2031, thence north 78 deg. 47' west 204.4 Cor. No. 5, Sur. No. 2031, thence south 5 deg. 07' east 168.8 feet Cor. No. 2, Sur. No. 2012, Mizpah lode 188.1 feet intersect line 3-4 Sur. No. 2053, thence north 86 deg. 39' east 192.5 feet Cor. No. 3, the place of beginning, containing 0.72 acres. Also expressly excluding all that portion of the Mizpah lode Sur. No. 2012, in conflict with Sur. No. 2053, described as follows: Beginning at Cor. No. 4, Sur. No. 2053, thence north 86 deg. 39' east 407.5 feet intersect line 2-3 Sur. No. 2012 1-4 Sur. 2031, thence north 5 deg. 07' west 19.3 feet Cor. No. 2, Sur. No. 2012, thence south 84 deg. 53' west 407.0 feet intersect line 4-5 Sur. No. 2053, thence south 3 deg. 24' east 6.7 feet Cor. No. 4, the place of beginning, containing 0.12 acres. Also expressly excluding all that portion of the Triangle lode, surveyed, in conflict with Sur. No. 2053, described as follows: Beginning at Cor. No. 2 Sur. No. 2012, Mizpah

lode, thence south 84 deg. 53' west 407 feet intersect line 4-5 Sur. No. 2053, thence north 3 deg. 24' west 67.9 feet intersect south side line Sur. No. 2004, thence south 84 deg. 43' east 153.1 feet Cor. No. 3, Sur. No. 2004, thence north 24 deg. 20' east 275.6 feet Cor. No. 2, Sur. No. 2004, thence north 6 deg. 41' east 291.8 feet intersect north side line of the Triangle lode, thence north 76 deg. 07' east 7.8 N. E. Cor. Triangle, thence south 10 deg. 19' east 569.3 feet Cor. No. 2, the place of beginning, containing 1.70 acres.

The original certificate of location of the Ivanpah quartz mine is of record in the office of the recorder of Tonopah Mining District, Nye County, Nevada, in book "C" records of said district, at page 32 thereof. The amended and additional certificate of location of said Ivanpah quartz mine is of record in the recorder's office of the Tonopah Mining District, Nye County, Nevada, in book "D" records of said Tonopah Mining District, at pages 76 and 77 thereof; and of record in the recorder's office of Nye County, State of Nevada, in book "F" of mining locations, at pages 360 to 362 inclusive, of the records of said county.

The presumed general course or direction of the said Ivanpah quartz mine, vein, lode or mineral deposit is shown upon the plat posted on said claim and as near as can be determined from present developments, has a northerly and southerly course or strike; the claim being for 700 feet south and 800 feet north from the location monument along said vein, lode or mineral deposit, together with 300 feet on each side of the center

thereof. The names of the adjoining mining claims and the names of the owners or claimants thereof are as follows: On the north, Pyramid Fraction, surveyed, applicant, claimant; Idahoan No. 3 and Mining Chance, surveyed, Montana Tonopah Mining Company, claimant; on the east, Elaine, surveyed, applicant, claimant; on the south, survey No. 2012, Mizpah lode, Tonopah Mining Company of Nevada, claimant, and survey No. 2031, Tonopah Belmont Mining Company, claimant; on the west Triangle, surveyed; survey No. 2004, Lucky Jim, Jack Rabbit and Mining Chance Mining Claims, Montana Tonopah Mining Company, claimant. Said claims as shown on the official plat posted on said Ivanpah quartz mine. And all persons claiming adversely the mining ground, vein, lode, premises, or any portion thereof so described, surveyed, platted and applied for, are hereby notified that unless their adverse claims are duly filed according to law, and the regulations thereunder, within the time prescribed by law, with the register of the United States land office at Carson City, County of Ormsby, State of Nevada, they will be barred by virtue of the provisions of the said statute.

O. H. GALLUP,
Register.

It is hereby ordered that the foregoing notice of application for patent be published for the period of ten consecutive weeks in the Tonopah Bonanza, a weekly newspaper published at Tonopah, State of Nevada.

O. H. GALLUP,
Register.

Date of first publication, September 19, 1903.

KEY PITTMAN,

Law Attorney for Applicant, Rooms 2 and 4, Golden
Block, Tonopah, Nev.

4-229.

CERTIFICATE THAT NOTICE REMAINED POSTED
SIXTY DAYS.

United States Land Office, at Carson City, Nev.,

Dec. 8, 1903.

I hereby certify that a notice, of which the attached notice is a copy, of application No. 958, by the Tonopah North Star Tunnel & Dev. Co., for a patent for the Ivanpah Lode Mining Claim, remained conspicuously posted in this office for the full period of sixty days; that said notice was posted on the 14th day of Sept., A. D. 1903, and remained posted until the 8th day of Dec., A. D. 1903; that during that time the plat of the official survey No. 2053 of said claim remained in this office, and that adverse claim has been filed, November 17, 1903, No. 121.

O. H. GALLUP,

Register.

U. S. Land Office, Carson City, Nevada,

July 13, 1904.

I hereby certify that the forgoing is a true and correct copy of certificate that notice remained posted sixty days in mineral application No. 958, Ivanpah lode Mining Claim now on file in my office.

O. H. GALLUP,

Register.

[Endorsed]: No. 771. U. S. Cir. Court, Dist. of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tunnel & Development Company. Ivanpah's Application for Patent. Defendant's Exhibit "F." Filed July 15th, 1904. T. J. Edwards, Clerk.

Defendants' Exhibit "G."

MIZPAH INTERSECTION.

**AMENDED AND ADDITIONAL CERTIFICATE OF
LOCATION.**

Know all men by these presents: That the undersigned citizens of the United States, has this 17th day of May, 1902, amended, located and claimed, and by these presents does amend, locate and claim, by right of the original discovery and the location heretofore made, such deeds, transfers or conveyances as may have been made, and this amended certificate made, filed and recorded as provided by Federal law and by the laws of the State of Nevada, now in force, and local customs and rules fifteen hundred linear feet on this lode, vein, ledge or deposit, bearing gold, silver, lead, copper and other valuable minerals, with all its dips, angles and variations as allowed by law, together with 300 feet on each side of the middle of said vein at the surface, and all veins, lodes, ledges or deposits and surface ground within the lines of said claim. This said lode was originally located by D. R. Lewis and Chas. J. Carr on the 26th day of August, 1901, and named the Dave Lewis Hope, by which name it is found of record

in Book E. of Mining Locations, pages 123 and 124, Nye County, Nevada, Records. It is also found in Book B, page 119, Records of Tonopah Mining District, said county and State. The name of this lode in future will be the Mizpah Intersection. The date of this amended location is made the 17th day of May, 1902. The name of the amending locator is Jerome P. Porter. From this discovery point at the discovery shaft there is claimed by me 1000 feet in a southeasterly direction and five hundred feet in a northwesterly direction, along the course of said lode or vein, the general course of this vein is N. 8° W. by south 8° east. The discovery shaft or its equivalent is situated upon the claim 800 feet south from the north end center and exposes the ledge at a depth of fully ten feet. Its dimensions are 5 by 8 by 10 ft. deep. This further additional and amended certificate of location is made and filed without waiver of any previously acquired and existing rights in and to said mining claim but for the purpose of correcting any errors or omissions in the original location or location certificate, description or record, and for the purpose of securing the benefits of the Act of the Legislature of the State of Nevada, approved March 16th, 1897, and the amendments thereto; and of conforming to the requirements of law, the amending locator hereto is the original locator or lawful grantee, deriving title and right of possession by deed of conveyance. This location is described by metes and bounds as follows, to wit: Commencing at apex of hill at post or monument and running north 8° west five hundred feet to center end post, marked N. end center Mizpah Intersection,

thence three hundred feet 8° south to the N. W. corner post, marked N. W. corner, Mizpah Intersection, thence seven hundred and fifty feet south 8° east to the west center side line post marked W. center side line Mizpah Intersection, thence 750 feet south 8° east to S. west corner post marked S. W. corner Mizpah Intersection, thence three hundred feet east 8° north to south center end post marked south center end line Mizpah Intersection, thence three hundred feet east 8° N. to southeast corner post marked S. E. corner post Mizpah Intersection, thence 750 feet north 8° west to east center side line marked E. center side line, Mizpah Intersection, thence seven hundred and fifty feet north 8° west to northeast corner post marked N. E. corner post Mizpah Intersection, thence three hundred feet west 8° south to north center end post marked N. center end post Mizpah Intersection, thence five hundred feet south 8° east to the point of beginning.

Locator: JEROME P. PORTER.

Witness: J. D. LOTHROP.

R. A. VAUGHN.

Recorded at request of J. P. Porter, May 17, 1902, at
2 o'clock P. M.

W. BROUGHER,

Co. Recorder.

By Thos. Warburton,

Deputy.

State of Nevada,
County of Nye,—ss.

I, W. J. Rice, County Recorder of Nye County, State of Nevada, do hereby certify the foregoing to be a full, true

and correct copy of Amended and Additional Certificate of Location of Dave Lewis Hope or Mizpah Intersection Mining Claim, recorded on the 17th day of May, 1902, at 2 o'clock P. M., and as the same appears of record in Book F of Mining Locations, page 141, Nye County, Nevada, Records. Witness my hand and official seal this 24th day of November, 1903.

[Seal]

W. J. RICE,

County Recorder, Nye County, State of Nevada.

By W. H. Cowan,

Deputy.

[Endorsed]: Abstract of Title of Dave Lewis Hope or Mizpah Intersection Mining Claim. No. 771. U. S. Circuit Court, Dist. of Nevada. Jerome P. Porter, et al. vs. Tonopah North Star Tun. & Development Company. Add. and Amended Certificate of Location of Mizpah Intersection Claim, on pp. 3, 4, 5. Defendants' Exhibit "G." Filed July 15, 1904. T. J. Edwards, Clerk.

Defendants' Exhibit "H."

State of Nevada,
Nye Co.

Know *al* men by these presents, that I, F. M. Ish, have this 10 day of October, 1901, located 1500 *liniar* ft. on the Ivanpah Lode or vein or deposit, together with 300 ft. on each side of the middle of the vein 700 ft. running southerly and 800 ft. running northerly from center of discovery monument situated in *Tonoph* Mining district, Nye

County, State of Nevada, to wit, the south end of this claim adjoins the north side line of the Mizpah Mine and crosses a portion of the east end of the *lucky Jim* is situated on the west and northwest slope of the high hill, northeast of the Town of Tonopah known as the *odie* peak.

Filed for record Jan. 8, 1902, at request of Geo. Coslett.

T. F. EGAN,
Dist. Recorder.

Recorded at request of T. F. Egan, Feb. 8, 1902, at 20 min. past 9 o'clock A. M.

W. BROUGHER,
Co. Recorder.

By Thos. Warburton,
Deputy.

Recorded in Book E of Mining Locations, page 241.

State of Nevada,
County of Nye,—ss.

I, W. J. Rice, County Recorder of Nye County, State of Nevada, do hereby certify the foregoing to be a full, true and correct copy of Location Notice of Ivanpah Mining Claim, Tonopah, Nye County, Nev., recorded on the 8th day of Feb. 1902, at 9:20 o'clock A. M., and as the same appears of record in Book E of Mining Locations, page 241, Nye County, Nevada, Records.

Witness my hand and official seal this 28th day of June, 1904.

[Seal]

W. J. RICE,
County Recorder, Nye County, State of Nevada.

By W. H. Cowan,
Deputy.

ADDITIONAL CERTIFICATE OF LOCATION.

The Tonopah North Star Tunnel and Development Company, a corporation, hereby declares and files this the additional certificate of location of the Ivanpah Lode Mining Claim situated in the Tonopah Mining District, Nye County, State of Nevada. Said claim was located on the 10th day of October, 1901, by Frank M. Ish, who filed his certificate of location of said claim for record in the Tonopah Mining District and the County Recorder's office of said Nye County, on the 8th day of June, 1902. Said Ish in locating said claim claimed seven hundred linear feet in a southerly direction and eight hundred linear feet in a northerly direction, from the point of discovery (which is *definitely* described herein) along said lode and three hundred feet on each side of the center thereof. That on the 15th day of July, 1902, the said Frank M. Ish, conveyed by good and sufficient deeds to the Tonopah North Star Tunnel and Development Company all his right, title and interest in and to said Ivanpah claim. That the Tonopah North Star Tunnel and Development Company is now the owner of and in the sole possession of said mining claim. That the said mining claim is now and always has been known as the Ivanpah. That the general course of this lode and vein is a northerly and southerly direction, and has its strike, on a line equal distance from the side lines thereof. That said claim is situated in section thirty-five, township three north, range forty-two E., M. D. M. The discovery cut is situated at a point north 3 degrees east 23 minutes west 41 $\frac{5}{10}$ feet from this location and dis-

covery monument, and it is of the following dimensions. Four feet wide, twelve feet face and fourteen feet in length on the bottom. That said cut exposes said lode for a depth of more than ten feet from the surface. All the corners not otherwise hereinafter described, are marked by posts four inches square, four and one-half feet in length and set eighteen inches in the ground, with a mound of earth and stone not less than four and one-half feet in diameter at the base and three feet in height, piled up around the post. For a more complete and accurate description of said claim, the field-notes of the survey of said claim by S. K. Bradford made on the first day of August, 1902, as hereinafter set out and signed by him on this notice, as follows, to wit: Commencing at N. E. Cor. No. 1 a pine post marked N. E. Co. No. 1 Ivanpah whence the N. E. Cor. Sec. No. 35 T. 3 N. R. 42 E. M. D., bears N. $11^{\circ} 37'$ E. 1182.2 feet, thence south $3^{\circ} 28'$ E. 750 feet to the E. side Cor. No. 2 a post marked E. side Cor. No. 2. Ivanpah 1500 ft. to S. E. Cor. No. 3 a post marked S. E. Cor. No. 3. Ivanpah, thence $86^{\circ} 37'$ W. 600 feet to Sec. Cor. No. 4 a post marked S. W. Cor. No. 4 Ivanpah whence Cor. No. 5 Sur. No. 2004 Lucky Jim lode bears N. $80^{\circ} 11'$ E. 134 ft. thence N. $3^{\circ} 23'$ W. 750 ft. to W. side Cor. No. 5 a post marked W. side Cor. No. 5. Ivanpah 1500 feet to N. W. Cor. No. 6 a post marked N. W. Cor. No. 6 Ivanpah, thence W. $86^{\circ} 37'$ E. 600 ft. to N. E. Cor. No. 1, place of beginning. A post marked Loc. Dis. Ivanpah in which a copy of this amended location certificate is posted, is set at N. $3^{\circ} 23'$ W. 700 ft. from the center of the south end line of this claim. Said post is $4\frac{1}{2}$ ft. long

4 ins. square, set 18 ins. in the ground, with mound of earth and stone 4 1/2 ft. in diameter at base, built up around the stone 3 feet in height. Ground in conflict with Lucky Jim not claimed by Ivanpah. This claim is adjoined on the south by the Silver State and Mizpah Lodes and on the west by the Lucky Jim and Mining Chance Lode. Magnetic variation at all the corners is 16° 52' E. I hereby certify that the Ivanpah Lode was actually surveyed by me, and that the above description is sufficient to identify the claim.

S. K. BRADFORD,
Surveyor.

In witness whereof the North Star Tunnel and Development Company, by its Secretary, duly authorized so to do, has hereunto affixed its corporate name and seal.

(Signed) TONOPAH NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY,

[Seal]

By W. J. HARRIS,
Its Secretary.

Recorded at request of Key Pittman, Aug. 11, 1902, at
8 o'clock A. M.

W. BROUGHER,
Recorder.

By Thos. Warburton,
Deputy.

Recorded in Book F of Mining Locations, pages 360 to
362.

State of Nevada,
County of Nye,—ss.

I, W. J. Rice, County Recorder of Nye County, State of Nevada, do hereby certify the foregoing to be a full, true and correct copy of Amended and Additional Certificate of Location of Ivanpah Mining Claim, recorded on the 11th day of August, 1902, at 8 o'clock A. M., and as the same appears of record in Book F of Mining Locations, page 360, Nye County, Nevada, records.

Witness my hand and official seal this 28th day of June, 1904.

[Seal]

W. J. RICE,

County Recorder, Nye County, State of Nevada.

By W. H. Cowan,

Deputy.

Frank M. Ish, to Tonopah North Star Tunnel & Develop.
Co.

This indenture, made the 15th day of July, in the year of our Lord one thousand nine hundred and two, between Frank M. Ish, the party of the first part, and Tonopah North Star Tunnel and Development Company (a corporation) the party of the second part. Witnesseth: That the party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to him in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does by these presents, grant, convey and quitclaim, unto the said party of the second part, and to its successors and assigns, all that certain quartz *cert* Mining Claim, situ-

ated in the Tonopah Mining District, County of Nye, State of Nevada, and bounded and described as follows, to wit: All that certain Mining Claim, known and recorded as the "Ivanpah" Quartz Mining Claim, said claim being situated upon the west slope of Oddie Mountain, about two hundred feet below the summit, being the same located by the grantor on the 10th day of October, 1901. Together with all the metals therein and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed, and also, all and singular, the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances. To have and to hold, all and singular the said premises, together with the appurtenances, and privileges thereunto incident, unto the said party of the second part, its successors and assigns forever. In witness whereof the said party of the first part, has hereunto set his hand and seal, the day and year first above written.

FRANK M. ISH. [Seal]

Signed, sealed and delivered in the presence of

KEY PITTMAN.

State of Nevada,
County of Nye.

On this 15th day of July, in the year one thousand nine hundred and two, before me Josiah R. Duffield, a notary public, in and for Nye County, State of Nevada, personally appeared Frank M. Ish, known to me to be the same person, whose name is subscribed to the within instrument and he duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned. In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the county of Nye, the day and year in this certificate first above written.

[Seal]

JOSIAH R. DUFFIELD,

Notary Public, in and for the County of Nye, State of Nevada.

Recorded at request of Key Pittman, Aug. 11, 1902, at 8:05 A. M.

W. BROUGHER,

Co. Recorder.

By Thos. Warburton,

Deputy.

Recorded in Book P of Deeds, pages 168 to 170.

State of Nevada,
County of Nye,—ss.

I, W. J. Rice, County Recorder of Nye County, State of Nevada, do hereby certify that the foregoing is a full, true and correct abstract of title of The Ivanpah Min-

ing Claim, situated in Tonopah Mining District, Nye County, Nevada, Nye County, Nevada, as the same appears of record in my office. Witness my hand and official seal, this 28th day of June, 1904.

[Seal]

W. J. RICE,

County Recorder, Nye County, State of Nevada.

By W. H. Cowan,

Deputy.

[Endorsed]: Abstract of Title. Ivanpah Mining Claim. No. 771. U. S. Circuit Court, Dist. of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tun. & Development Co. Defendants' Exhibit "H." Filed July 15, 1904. T. J. Edwards, Clerk.

Defendant's Exhibit "I."

General Land Office.

Mineral Certificate.

No. 38,138.

No. 744.

The United States of America, To All to Whom These Presents Shall Come, Greeting:

Whereas, in pursuance of the provisions of the Revised Statutes of the United States, chapter six, title thirty-two, and legislation supplemental thereto, there have been deposited in the general land office of the United States, the plat and field-notes of survey and the certificate, No. 744, of the Register of the land office at Carson City, in the State of Nevada, accompanied by other evidence whereby it appears that the Montana Tonopah Mining Company did, on the twenty-second day of December, A. D. 1903, duly enter and pay for

that certain mining claim or premises, known as the Lucky Jim Lode Mining Claim, designated by the Surveyor-general as lot No. 2004, embracing a portion of section thirty-five, in township three north of range forty-two east, Mount Diablo Meridian, in the Tonopah Mining District, in the County of Nye, and State of Nevada, in the District of lands, subject to sale at Carson City, and bounded, described, and platted as follows, with magnetic variation sixteen degrees and fifty-two minutes east. Beginning at corner No. 1, from which the northeast corner of section thirty-five, in township three north of range forty-two east, Mount Diablo meridian, bears north twelve degrees east two thousand one hundred and sixty-six and seven-tenths feet distant. Thence, first course, south six degrees and forty-one minutes west two hundred and ninety-eight and two-tenths feet to corner No. 2. Thence, second course, south twenty-four degrees and twenty minutes west two hundred and seventy-five and six-tenths feet to corner No. 3. Thence third course, north eighty-four degrees and forty-three minutes west six hundred and ninety-seven and eight-tenths feet to corner No. 4; one thousand four hundred and fifty-three and one-tenth feet to corner No. 5.

Thence, fourth course, north twenty-four degrees and twenty minutes east five hundred and ninety-one feet to corner No. 6, from which the center of discovery monument bears south forty-seven degrees and nine minutes east four hundred and fifty-nine and one-tenth feet distant. Thence, fifth course, south eighty-four degrees and forty-three minutes east seven hundred and fifty

feet to corner No. 7; one thousand three hundred and fifty-seven and four-tenths feet to corner No. 1; the place of beginning; said lot No. 2004, extending one thousand four hundred and forty and five-tenths feet in length along said Lucky Jim vein or lode, and containing eighteen acres and thirty-one hundredths of an acre of land, more or less.

Now, Know Ye, that there is, therefore, hereby granted by the United States unto the said Montana Tonopah Mining Company, and to its successors and assigns; the said mining premises hereinbefore described, and not expressly excepted from these presents, and all that portion of the said Lucky Jim, vein, lode or ledge, and of all other veins, lodes and ledges, throughout their entire depth, the tops or apexes of which lie inside of the surface boundary lines of said granted premises in said lot No. 2002, extended downward vertically, although such veins, lodes or ledges in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said premises: Provided, that the right of possession to such outside parts of said veins, lode or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said lot No. 2004, so continued in their own direction that such planes will intersect such exterior parts of said veins, lodes, or ledges. And provided, further, that nothing herein contained shall authorize the grantee herein to enter upon the surface of a claim owned or possessed by another.

To have and to hold said mining premises, together with all the rights; privileges; immunities, and appurtenances of whatsoever nature thereunto belonging unto the said grantee above named and to its successors and assigns forever; subject, nevertheless, to the above-mentioned, and to the following conditions and stipulations:

First.—That the premises hereby granted, with the exception of the surface, may be entered by the proprietor of any other vein, lode or ledge, the top or apex of which lies outside of the boundary of said granted premises, should the same in its dip be found to penetrate, intersect, or extend into said premises, for the purpose of extracting and removing the ore from such other vein, lode or ledge.

Second.—That the premises hereby granted shall be held, subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of the courts. And there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

Third.—That in the absence of necessary legislation by Congress, the legislature of Nevada may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof, I, Theodore Roosevelt, Presi-

dent of the United States of America, have caused these letters to be made patent, and the seal of the general land office to be hereunto affixed.

Given under my hand at the city of Washington, the third day of March, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States, the one hundred and twenty-eighth.

By the President: T. ROOSEVELT.

[Seal]

By F. M. McKEAN,
Secretary.

C. H. BRUSH,

Recorder of the General Land Office.

E. G. E. Recorded Vol. 381, pages 427 to 429, inclusive.

[Endorsed]: No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tunnel and Development Co. Lucky Jim Patent. Defendants' Exhibit "I" Filed July 15, 1904. T. J. Edwards, Clerk.

United States of America,
District of Nevada,—ss.

I, T. J. Edwards, Clerk of the Circuit Court of the United States for the District of Nevada, do hereby certify that the above and foregoing is a full, true and correct copy of the original thereof now on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in

Carson City, this the 12th day of August, A. D. 1904, and in the year of our Independence, the 129th.

[Seal]

T. J. EDWARDS,
Clerk.

[Endorsed]: No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. vs. Tonopah North Star T. & D. Co. Certified Copy of Lucky Jim Patent, Substituted for the Original Patent, which was Introduced by the Defendant as Exhibit "I." Filed August 12, 1904. T. J. Edwards, Clerk.

Defendant's Exhibit "J."

4-462.

General Land Office.

Mineral Certificate.

No. 38,139.

No. 745.

The United States of America, To All to Whom These Presents Shall Come, Greeting:

Whereas, in pursuance of the provisions of the Revised Statutes of the United States, chapter six, title, thirty-two and legislation supplemental thereto, there have been deposited in the general land office of the United States the plat and field-notes of survey and the certificate, No. 745, of the Register of the land office at Carson City, in the State of Nevada, accompanied by other evidence whereby it appears that the Montana Tonopah Mining Company, did, on the twenty-second day of December, A. D. 1903, duly enter and pay for that certain mining claim or premises, known as the Triangle

Lode Mining Claim, designated by the surveyor-general as lot No. 2074, embracing a portion of section thirty-five, in township three north of range forty-two east, Mount Diablo meridian, in the Tonopah Mining District, in the County of Nye, and State of Nevada, in the District of lands subject to sale at Carson City and bounded, described, and platted as follows, with magnetic variation sixteen degrees and fifty-two minutes east.

Beginning at corner No. 1, from which the northeast corner of section thirty-five, in township three north of range forty-two east, Mount Diablo meridian, bears north eleven degrees and forty-eight minutes east two thousand one hundred and sixty-nine and seven-tenths feet distant. Thence, first course, south ten degrees and nineteen minutes east five hundred and sixty-nine and three-tenths feet to corner No. 2. Thence, second course, south eighty-four degrees and fifty-three minutes west four hundred and seven feet intersect line 4-5, the west side line, of survey No. 2053, the Ivanpah Lode Claim; one thousand three hundred and eighty-nine and nine-tenths feet to corner No. 3 of survey No. 2030, the Campfire Lode Claim; one thousand four hundred and thirty-six and seven-tenths feet to corner No. 4 of said survey No. 2030; one thousand four hundred and eighty-three and five-tenths feet to corner No. 3, situate on the south line of the Midway location, unsurveyed, from which discovery bears north sixty-six degrees and sixteen minutes east two hundred and fifty-two and three-tenths feet distant. Thence, third course, north ten degrees and nineteen minutes west sixty-one feet inter-

sect line 4-5, of said survey No. 2030, at north forty-five degrees and fifty-two minutes west eighty and two-tenths feet from corner No. 4, also intersect the northeast end line of said Midway location, at north forty-five degrees and fifty-two minutes west eighty and two-tenths feet from the southeast corner of said location; two hundred and seventy-one and four-tenths feet intersect line 4-5 of survey No. 2004, the Lucky Jim Lode Claim, amended, at north eighty-four degrees and forty-three minutes west five hundred and sixty-seven and eight-tenths feet from corner No. 4; three hundred and forty-three feet to corner No. 4. Thence, fourth course, north seventy-six degrees and seven minutes east five hundred and fourteen and two-tenths feet intersect line 1-2 of said survey No. 2030, at north forty-five degrees and fifty-two minutes west sixty-seven and eight-tenths feet from corner No. 2; one thousand one hundred and thirty-five and nine-tenths feet intersect said line 4-5 of survey No. 2053; one thousand four hundred and seventy-two and five-tenths feet intersect line 1-2 of said survey No. 2004, at north six degrees and forty-one minutes east two hundred and ninety-one and seven-tenths feet from corner No. 2, and from said corner No. 2, corner No. 3 of said claim bears south twenty-four degrees and twenty minutes west two hundred and seventy-five and six-tenths feet distant, one thousand four hundred and eighty and three-tenths feet to corner No. 1, the place of beginning. Expressly excepting and excluding from these presents all that portion of the ground hereinbefore described, embraced in said mining claims

or surveys Nos. 2004, 2030, and said Midway location, unsurveyed, and that portion of said survey No. 2053 in conflict with said survey No. 2004, and also all that portion of said Triangle vein or lode, and of all veins, lodes and ledges throughout their entire depth, the tops or apexes of which lie inside of such excluded ground; said lot No. 2074, extending one thousand four hundred and eighty and three-tenths feet in length along said triangle vein or lode; the granted premises in said lot containing four acres and sixty-hundredths of an acre of land, more or less.

Now Know Ye, that there is therefore hereby granted by the United States unto the said Montana Tonopah Mining Company, and to its successors and assigns, the said mining premises hereinbefore described, and not expressly excepted from these presents, and all that portion of the said Triangle vein, lode, or ledge, and of all other veins, lodes, and ledges, throughout their entire depth the tops or apexes of which lie inside of the surface boundary lines of said granted premises in said lot No. 2074 extending downward vertically, although such veins, lodes, or ledges in their downward course may so far depart from a perpendicular as to extend outside of the vertical side lines of said premises: Provided, that the right of possession to such outside parts of said vein, lodes, or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said lot No. 2074, so continued in their own direction that such planes will intersect such exterior parts of said

veins, lodes, or ledges. And provided further, that nothing herein contained shall authorize the grantee herein to enter upon the surface of a claim owned or possessed by another.

To have and to hold said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging unto the said grantee above named and to its successors and assigns forever; subject nevertheless to the above-mentioned and to the following conditions and stipulations.

First.—That the premises hereby granted, with the exception of the surface, may be entered by the proprietor of any other vein, lode, or ledge, the top or apex of which lies outside of the boundary of said granted premises, should the same in its dip be found to penetrate, intersect, or extend into said premises, for the purpose of extracting and removing the ore from such other vein, lode or ledge.

Second.—That the premises hereby granted shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of the courts. And there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

Third.—That in the absence of necessary legislation by Congress, the legislature of Nevada may provide

rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof I, Theodore Roosevelt, President of the United States of America, have caused these letters to be made patent, and the seal of the general land office to be hereunto affixed. Given under my hand at the City of Washington, the third day of March, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States, the one hundred and twenty-eighth.

By the President:

T. ROOSEVELT.

[Seal]

By F. M. McKEAN,

Secretary.

C. H. BRUSH,

Recorder of the General Land Office.

E. G. E. Recorded Vol. 380, pages 445 to 448, inclusive.

[Endorsed]: No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tunnel and Development Co. Triangle Lode Patent. Defendant's Exhibit "J." Filed July 15, 1904. T. J. Edwards, Clerk.

United States of America,

District of Nevada.—ss.

I, T. J. Edwards, Clerk of the Circuit Court of the United States for the District of Nevada, do hereby certify that the above and foregoing is a full, true

and correct copy of the original thereof now on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at my office, in Carson City, this the 12th day of August, A. D. 1904, and in the year of our Independence the 129th.

[Seal]

T. J. EDWARDS,
Clerk.

[Endorsed] No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. vs. Tonopah North Star T. & D. Co. Certified Copy Triangle Lode Patent, Substituted for the Original Patent, which was Introduced in Evidence by Defendant as Exhibit "J." Filed August 12, 1904. T. J. Edwards, Clerk.

Defendants' Exhibit "C."

This indenture, made the 15th day of May, in the year of our Lord one thousand nine hundred and two. Between David R. Lewis of Tonopah, Nye County, Nevada, and Charles J. Carr of Berkeley, California, by his attorney in fact, David R. Lewis of Tonopah, Nevada, the parties of the first part, and Jerome P. Porter of San Francisco, California, the party of the second part, Witnesseth: That the said parties of the first part, for and in consideration of the sum of five thousand and five hundred (\$5,500.00) dollars, in gold coin of the United States of America, to them in hand paid by the said party of the second part, at or before the ensailing and delivery of these presents; the receipt whereof

is hereby acknowledged, have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns forever, all that certain mine or mining claim situate, lying and being in the said County of Nye and State of Nevada and particularly described as follows, to wit:

That certain claim or location located August 26th, 1901, in the names of Dave Lewis and Charles Carr, the notice of which location is recorded in the office of the County Recorder of said Nye County, in Book E. of Min. Loc., at page 123 and 4. The said mine or mining claim is 1,500 feet in length by 600 feet in width and is known as and called the Lewis Hope Mine, otherwise sometimes called the Dave Lewis Hope Mine. Situate in Tonopah Mining District.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remained and remainder, rents, issues and profits thereof. And also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the above-described premises and every part and parcel thereof, with the appurtenances.

To have and to hold, all and singular the above-mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof, the parties of the first part have hereunto set their hands and seals the day and year first above written.

D. R. LEWIS. [Seal]

Signed, sealed and delivered in the presence of:

R. A. VAUGHN.

J. D. LOTHROP.

HERMAN REISCHKE.

State of Nevada,
County of Nye,—ss.

On this 15th day of May, in the year one thousand nine hundred and two, before me, L. O. Ray, Justice of the Peace for Ray, Nye County, Nevada, personally appeared D. R. Lewis, known to me to be the same person whose name is subscribed to the within instrument, and who duly acknowledged to me that he executed the same, freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in Ray the day and year in this certificate first above written.

[Seal]

L. O. RAY,

Justice of the Peace, for Ray, Nye County, Nevada.

[Endorsed]: Deed. David R. Lewis and Charlie J. Carr to Jerome P. Porter. Dated May 15, A. D. 1902. Recorded at the request of J. P. Porter, on the 19th day of May, A. D. 1902, 9 A. M., in liber "O" of Deeds, pages 578/579, Records of Nye County, Nevada. W.

Brougher, County Recorder. By Thos. Warburton, Deputy.

No. 177. U. S. Cir. Court, Dist. of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tunnel and Development Company. Defendants' Exhibit "C." Filed July 15, 1904. T. J. Edwards, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
District of Nevada.*

JEROME P. PORTER et al.

vs.

TONOPAH NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY,
Respondent.

No. 771.

Order Enlarging Time to File Record on Appeal.

Good cause appearing there, it is hereby ordered that the time in which to file the record on appeal, in this cause, be and the same is hereby enlarged so as to include the 28th day of August, 1905.

THOMAS P. HAWLEY,

Judge.

Dated, July 28, 1905.

[Endorsed]: No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. vs. Tonopah North Star T. & D. Co. Order Enlarging Time to File Record on Appeal. Filed July 28, 1905. T. J. Edwards, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
District of Nevada.*

JEROME P. PORTER et al.

vs.

TONOPAH NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY.

} No. 771.

Order Enlarging Time to File Record on Appeal.

Good cause appearing thereof, it is hereby ordered that the time in which to file the record on appeal in this cause be, and the same is hereby, enlarged so as to include Friday, the first day of September, 1905.

THOMAS P. HAWLEY,
Judge.

[Endorsed]: No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tun. & Devel. Co. Order Enlarging Time to File Record on Appeal. Filed Aug. 26, 1905. T. J. Edwards, Clerk.

No. 771.

Complainants' Exhibit No. 14.

T. J. E.

This card must be neatly and correctly made up and addressed at the post office where the article is registered.

Postmark of Delivering Office
 BUTLER
 Jun
 17
 6 P. M.
 1902
 NEV.

The postmaster who delivers the registered article must see that this card is properly signed, postmarked and mailed to the sender.

And date of Delivery.

POST OFFICE DEPARTMENT.

Official Business.

Penalty of \$300 for Private Use.

Return to:

Name of Sender, *J. P. Porter.*

Street and Number, }
 or Post Office Box. } *906 Market St.*

Post Office at *San Francisco,*

County, State *Cal.....*

Form No. 1548.

REGISTRY RETURN RECEIPT.

Received from the Postmaster at *Butler, Nev.*
 (Delivering office.)

Registered Letter No. *1572,* from *Butler, Nev.*
 (Office of origin.)

Addressed to *To The Secretary of North Star Tunnel Co.*
 (Name of addressee.)

Date, 190

(Date of Delivery.)

When delivery is made to an agent of the addressee, both addressee's name and agent's signature must appear in this receipt.

F. Golden.

(Signature or name of addressee.)

.....

(Signature of addressee's agent.)

A registered article must not be delivered to anyone but the addressee, except upon the addressee's written order.

When the above receipt has been properly signed, it must be postmarked with name of delivering office and actual date of delivery and mailed to its address, without envelope or postage.

[Written across face:] San Francisco, Cal., Jul. 5, 9:30 A. M., 1902.

[Endorsed]: No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tunnel and Development Co. Registry Receipt. Complainants' Exhibit No. 14. Filed July 15, 1904. T. J. Edwards, Clerk.

Complainants' Exhibit No. 17.

D. R. Lewis to R. B. Davis.

This indenture made the 28th day of June, in the year of our Lord, one thousand nine hundred and two, between D. R. Lewis of Tonopah, Nye County, State of Nevada, the party of the first part, and R. B. Davis, of the same place, the party of the second part, Witnesseth, that the said party of the first part, for and in

consideration of the sum of one dollar, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain lot, piece or parcel of land, situate in the Tonopah Mining District, County of Nye, State of Nevada, and bounded and particularly described as follows, to wit: All his right, title and interest in and to that certain quartz or lode claim, known and recorded in said district and county, as the Dave Lewis Hope quartz claim. Said claim lies on the west side of Oddie Mountain, and was located by grantee on the 26th day of August, 1901, together with all dips, spurs and angles, and other lodes or veins apexing within said ground, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. To have and to hold all and singular the said premises, together with the appurtenances unto the said party of the second part and to his heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

D. R. LEWIS. [Seal]

Signed, sealed and delivered in the presence of

KEY PITTMAN.

State of Nevada,
County of Nye,—ss.

On this 30th day of June, in the year one thousand nine hundred and two, before me, J. R. Duffield, notary public in and for Nye County, State of Nevada, personally appeared D. R. Lewis, known to me to be the same person whose name is subscribed to the within instrument, and he duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

J. R. DUFFIELD,
Notary Public.

Recorded at request of Geo. Bartlett, July 3, 1902, at 10 min. past 8 o'ck. A. M.

W. BROUGHER,
Co. Recorder.
By Thos. Warburton,
Deputy.

State of Nevada,
County of Nye,—ss.

I, W. J. Rice, County Recorder of Nye County, State of Nevada, do hereby certify the foregoing to be a full, true and correct copy of deed from D. R. Lewis to R. B. Davis, recorded on the 3d day of July, 1902, at 8:10 A. M., and as the same appears of record in Book P of Deeds, pages 68, 69, Nye County, Nevada Records.

Witness my hand and official seal this 16th day of
May, 1904.

[Seal]

W. J. RICE,

County Recorder, Nye County, State of Nevada.

By W. H. Cowan,

Deputy.

[Endorsed]: Certified Copy of Deed. R. D. Lewis to
R. B. Davis. Recorded at request of Geo. Bartlett, July
3, A. D. 1902, at 10 min. past 8 A. M., in book P of Deeds,
pages 68-69, Nye County, Nevada Records. W. Brougher,
Recorder. By Thos. Warburton, Deputy.

No. 771. U. S. Cir. Court, Dist. of Nevada. Jerome
P. Porter et al. vs. Tonopah North Star Tun. & Develop-
ment Co. Deed—Lewis to Davis. Complainants' Ex-
hibit No. 17. Filed July 15, 1904. T. J. Edwards, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
District of Nevada.*

JEROME P. PORTER, JOHN G.
JURY, THOS. W. CHANDLER,
CHARLES J. CARR and Mrs.
MARY THOMPSON,

Plaintiffs,

vs.

TONOPAH NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY
(a Corporation),

Defendant.

Petition for Appeal and Order Allowing Same.

The above-named plaintiffs, considering themselves aggrieved by the decree entered herein on th 20th day of February, 1905, in the above-entitled proceeding, do hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, and they pray that this appeal be allowed and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

GAROUTTE & GOODWIN,

WELLES WHITMORE,

Attorneys for Appellants.

Order.

And now, to wit, on this 25th day of May, 1905, it is ordered that said appeal be allowed as prayed for, the requisite assignment of errors having been filed.

THOMAS P. HAWLEY,

Judge.

The bond on the above appeal is hereby fixed at five hundred dollars (\$500).

THOMAS P. HAWLEY,

Judge.

[Endorsed]: No. 771. Circuit Court of United States, Ninth Circuit, District of Nevada. Jerome P. Porter et al., Plaintiffs, vs. Tonopah North Star Tunnel and Development Company, Defendants. Appeal and Order Allowing Appeal to United States Court of Appeals. Filed May 25, 1905. T. J. Edwards, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
District of Nevada.*

JEROME P. PORTER, JOHN G.
JURY, THOS. W. CHANDLER,
CHARLES J. CARR and Mrs.
MARY THOMPSON,

Plaintiffs,

vs.

TONOPAH NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY
(a Corporation),

Defendant.

Petition for Appeal and Order Allowing Same.

The above-named plaintiffs, considering themselves aggrieved by the decree entered herein on the twentieth day of February, 1905, in the above-entitled proceeding, do hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, and they pray that this appeal be allowed and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

WELLES WHITMORE and
GAROUTTE & GOODWIN,

Attorneys for Appellants.

Order.

And now, to wit, on this 29th day of May, 1905, it is ordered that said appeal be allowed as prayed for upon the filing of a bond in the sum of five hundred dollars (\$500), the requisite assignment of errors having been filed.

THOMAS P. HAWLEY,

Judge.

[Endorsed]: No. 771. Circuit Court of United States, Ninth Circuit, District of Nevada. Jerome P. Porter, et al., Plaintiffs, v. Tonopah North Star Tunnel and Development Company, Defendant. Appeal. Filed May 29th, 1905. T. J. Edwards, Clerk. By H. D. Edwards, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
District of Nevada.*

JEROME P. PORTER, JOHN G.
JURY, THOMAS W. CHANDLER,
CHARLES J. CARR and Mrs.
MARY THOMPSON,

Plaintiffs,

vs.

TONOPAH NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY
(a Corporation),

Defendant.

Bond on Appeal.

Know all men by these presents, that we, Jerome P. Porter, John G. Jury, Thos. W. Chandler, Charles J. Carr and Mrs. Mary Thompson, as principals, and the United States Fidelity and Guaranty Company, a corporation, duly organized under the laws of the State of Maryland and duly authorized to transact business in the State of Nevada, as surety, are held and firmly bound unto Tonopah North Star Tunnel and Development Company, a corporation. defendant named, in the sum of five hundred (\$500.00) dollars, to be paid to the said Tonopah North Star Tunnel and Development Company, or its assigns, to which payment well and truly to be made, we bind ourselves and each of us; jointly and severally; and our and each of our successors; representatives and assigns; firmly by these presents.

Sealed with our seals and dated the 27th day of May, A. D., 1905.

Whereas, the above-named plaintiffs, Jerome P. Porter, John G. Jury, Thos. W. Chandler, Charles J. Carr and Mrs. Mary Thompson, has taken an appeal to the United States Circuit Court of Appeals, for the Ninth Judicial Circuit, to reverse the decree in the above-entitled cause by the Circuit Court of the United States, Ninth Circuit, District of Nevada.

Now, therefore, the condition of the above obligation is such that if the above-named plaintiffs shall prosecute said appeal to effect and answer all costs and damages if it shall fail to make its plea good, then this obligation shall be void, otherwise to remain in full force and virtue.

In witness whereof, the said United States Fidelity and Guaranty Company, a corporation, hath caused its corporate name and seal to be hereunto affixed by its duly authorized officer, the day and year above written.

THE UNITED STATES FIDELITY AND GUARANTY COMPANY.

[Seal]

By H. V. D. JOHNS,
Its Attorney in Fact.

Form of bond and sufficiency of surety approved.

THOMAS P. HAWLEY,
Judge.

[Endorsed]: No. 771. Circuit Court of United States, Ninth Circuit, District of Nevada. Jerome P. Porter, et al., Plaintiffs, v. Tonopah North Star Tunnel

and Development Company, Defendant. Appeal Bond. Filed, May 29th, 1905. T. J. Edwards, Clerk. By H. D. Edwards, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
District of Nevada.*

JEROME P. PORTER, JOHN G.
JURY, THOMAS W. CHANDLER,
CHARLES J. CARR and Mrs.
MARY THOMPSON,

Plaintiffs,

vs.

TONOPAH NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY
(a Corporation),

Defendant.

Assignment of Errors.

Come now the plaintiffs and appellants and present this their assignment of errors herein, and say that in the record and proceedings herein there is error in this, to wit:

1. That the Circuit Court of the United States, Ninth Circuit, District of Nevada, erred in deciding this case against the plaintiffs and in favor of the defendant.

2. That said Court erred in finding and deciding that the location monument of the Dave Lewis Hope Claim was located on the Hog Back near the summit of Mount Oddie.

3. That said Court erred in finding and deciding that the location monument of the Dave Lewis Hope Claim was not situated about 300 feet north of the cut near the North Star shaft.

4. That the Court erred in finding and deciding that on October 10, 1901, the ground then located by F. M. Ish as the Ivanpah Claim was vacant public mineral lands subject to location.

5. That said Court erred in finding and deciding that the location made by F. M. Ish as the Ivanpah Claim was a valid location.

6. That said Court erred in finding and deciding that F. M. Ish, the locator of the Ivanpah Claim and the owners thereof, fully complied with the law in making said location and have the better right and title to the ground covered by said location.

7. That said Court erred in finding and deciding that the locator of the Ivanpah Claim could establish by proof outside of the certificate of location all or any of the essential facts required to make a valid location.

8. That said Court erred in finding and deciding that the proof of such facts outside of the record certificate are prima facie evidence of such other facts as are required to be stated in such certificate.

9. That said Court erred in finding and deciding that the original notice of location can be filed and recorded as provided by law within 90 days after the date of location thereof, and can be called and considered a certificate of location.

10. That said Court erred in finding and deciding "if

the locator is satisfied with his original notice he can file same within 90 days and can call it his certificate of location.”

11. That said Court erred in finding and deciding that the defendant had proved all the necessary facts entitling it to a patent.

12. That said Court erred in finding and deciding that the plaintiffs failed to establish by a preponderance of evidence the validity of the Dave Lewis Hope Claim, and that it includes a portion of the ground embraced within the boundaries of the Ivanpah location.

13. That said Court erred in overruling the objection of the plaintiffs to and admitting in evidence the verbal testimony of the witness F. M. Ish, giving his recollection of the contents of the notice of location made by him of the Ivanpah Claim, and in permitting the following question to be answered by said witness in that regard: “Q. Can you state the contents of the notice?”

14. That said Court erred in denying the motion of plaintiffs to strike out from the testimony of the witness John McCune the purported statements made to him by David Lewis, and in overruling the objection of plaintiffs to any declarations made by said Dave Lewis, to any person out of the presence of the co-locator or of the plaintiffs in this action.

15. That said Court erred in permitting the witness John McCune, over the objection and exception of the plaintiffs, to answer the following question: Regarding statements made to him by David Lewis concerning

the monuments pointed out to him by David Lewis, to wit: "Now what did Lewis say about these three monuments?"

16. That said Court erred in permitting the witness Uri B. Curtis, over the objection and exception of plaintiffs, to answer the following questions: "State whether or not you know the general reputation of Charles J. Carr in the community in which he lives for truth, honesty and integrity, answer yes or no?" "State whether it was good or bad."

17. That said Court erred in permitting the witness T. L. Oddie to answer the following question, over the objection and exception of plaintiffs, to wit: "Mr. Oddie, how many fires in Tonopah did you hear connected with Mr. Carr or suspicion talked about with reference to Mr. Carr, if any?"

18. That said Court erred in permitting the witness W. J. Harris to testify, over the objection and exception of the plaintiffs, to his other conversations with Dave Lewis, and his examination of a purported time book kept by said Dave Lewis, and the contents thereof.

19. That said Court erred in permitting the witness R. B. Davis to testify to the conversations and declarations made by David Lewis over the objection and exception of the plaintiffs, in response to the following question: "Now state to the Court the substance of that trip."

20. That said Court erred in permitting the witness R. B. Davis to produce an account-book and testify to

the items of said account in answer to the following question, over the objection and exception of plaintiffs:

“I would like you to turn in this book, upon the back of which is marked December 21, 1901, to February 28, 1902, to the accounts for the month of February. The entry in first part of February. Now, commencing Feb. 2 see if there is any account of David Lewis,” and admitting said account in evidence.

21. That said Court erred in denying the motion of plaintiffs to strike out from the record the statement of the account of David Lewis with the witness R. B. Davis, as follows, to wit: “A. David Lewis by McCune. 2½ lbs. of powder, 40c; ½ box of caps, 35c; 150 ft. of fuse, 40c.”

22. That said Court erred in overruling the objection to and admitting in evidence the amended certificate of location of the Ivanpah Claim, which was admitted and read in evidence and marked Defendant’s Exhibit “E.”

Whereas, by the law of the land said judgment ought to have been given for the plaintiffs and appellants and against the defendant and respondent, said appellants pray that the decree and judgment aforesaid given and entered herein by the said Circuit Court be reversed, annulled and held for naught, and that they, and each of them be restored to all things which have been lost by occasion of the said ruling, judgment and decree.

WELLES WHITMORE,
GAROUTTE & GOODWIN,
Attorneys for Appellants.

[Endorsed]: No. 771. Circuit Court of United States, Ninth Circuit, District of Nevada. Jerome P. Porter et als., Plaintiffs, vs. Tonopah North Star Tunnel and Development Company, Defendant. Assignment of Errors. Filed May 25, 1905. T. J. Edwards, Clerk.

In the Circuit Court of the United States, Ninth Circuit District of Nevada.

JEROME P. PORTER, JOHN G. JURY, THOMAS W. CHANDLER, CHARLES J. CARR and Mrs. MARY THOMPSON,	} Plaintiffs,
vs.	
TONOPAH NORTH STAR TUNNEL AND DEVELOPMENT COMPANY (a Corporation),	} Defendant.

Assignment of Errors (Additional).

Comes now the plaintiffs and appellants and present the following additional assignment of errors in the record and proceedings herein which was inadvertently omitted from the assignment of errors filed on May 25, 1905:

23. That said Court erred in finding and deciding that the plaintiffs are not, and never were, the owners,

or in the possession, or entitled to the possession of any part of that certain mining claim or premises situated, lying and being in the Tonopah Mining District, Nye County, State of Nevada, designated as the Ivanpah Lode Mining Claim.

24. That said Court erred in finding and deciding that Frank M. Ish and his grantees and successors have been in actual, peaceable, quiet, open and notorious possession since October 10, 1901, of the mining claim and premises and area embraced within the boundary liens of the "Ivanpah" mining claim.

25. That said Court erred in finding and deciding that the defendant is the owner (subject to the paramount title of the United States) and entitled to possession of the premises and area described in the application for patent for the said "Ivanpah" Mining Claim, and that by itself, its predecessors in interest and grantors, it has been such owner (subject to such paramount title) by virtue of the location thereof, and by virtue of compliance with the Acts of Congress and customs of the Tonopah Mining District, by said defendant, and its predecessors in interest and grantors, ever since the 10th day of October, 1901.

26. That said Court erred in finding and deciding that the plaintiffs have no estate or interest or posses-

sion or right of possession of, in or to any part or portion of the said "Ivanpah" Lode Mining Claim, and that the plaintiffs' claim of any estate or interest or right as against any part or portion of the said "Ivanpah" Lode Mining Claim is invalid and void.

Now come the attorneys for the plaintiffs in the above-entitled proceeding and petition that they may be allowed to file the foregoing additional assignment of errors which, through inadvertence and mistake, was omitted from the assignment of errors filed May 25, 1905, and further petition that the same may be received and considered as having been filed on the said 25th day of May, 1905.

WELLES WHITMORE and

GAROUTTE & GOODWIN,

Attorneys for Appellants.

And now, to wit, on this 27th day of May, 1905, it is ordered that the aforesaid petition be granted and it is hereby granted, and that the foregoing assignment of errors be filed as of May 25, 1905, providing the same be filed before or at the time of the filing of the bond.

THOMAS P. HAWLEY,

Judge.

[Endorsed]: No. 771. Circuit Court of United States, Ninth Circuit, District of Nevada. Jerome P. Porter, et al., Plaintiffs, v. Tonopah North Star Tunnel and Development Company, Defendant. Assignment of Errors (Additional). Filed May 29th, 1905, as of date May 25, 1905. T. J. Edwards, Clerk. By H. D. Edwards, Deputy Clerk.

In the Circuit Court of the United States, Ninth Circuit District of Nevada.

JEROME P. PORTER et al.,	}	No. 771.
Complainants,		
vs.		
TONOPAH NORTH STAR TUNNEL AND DEVELOPMENT COMPANY,		
Respondent.		

Clerk's Certificate to Transcript.

I, T. J. Edwards, Clerk of the Circuit Court of the United States, Ninth Judicial Circuit, in and for the District of Nevada, do hereby certify that the foregoing 411 typewritten pages numbered from 1 to 411, both inclusive, are a true and full copy of the record and of all proceedings in the cause therein entitled.

I further certify that the costs for making this record amount to the sum of \$283.60, and that the same has been paid by the complainants.

In witness whereof, I have hereunto set my hand and the seal of said Circuit Court, at Carson City, Nevada, this 30th day of August, 1905.

[Seal]

T. J. EDWARDS,

Clerk.

Citation.

UNITED STATES OF AMERICA—ss.

The President of the United States, to Tonopah North Star Tunnel and Development Company (a Corporation),
Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the Circuit Court of the United States, for the Ninth Circuit, District of Nevada, wherein Jerome P. Porter, John G. Jury, Thomas W. Chandler, Charles J. Carr and Mrs. Mary Thompson are appellants, and, you are appellee, to show cause, if any there be, why the decree rendered against the said appel-

lants, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable THOMAS P. HAWLEY, United States District Judge for the District of Nevada, this 28th day of June, A. D. 1905.

THOMAS P. HAWLEY,
United States District Judge, Presiding in said Circuit Court.

Copy received this 30th day of June, A. D. 1905.

CAMPBELL & METSON,
KEY PITMAN,
R. M. JACKSON,
Attorneys for Defendant.

[Enclosed]: No. 771. United States Circuit Court of Appeals, for the Ninth Circuit. Jerome P. Porter et al., Appellants, vs. Tonopah North Star Tunnel and Development Co., Appellee. Citation. Filed July 3d, 1905. T. J. Edwards, Clerk United States Circuit Court, District of Nevada.

[Endorsed]: No. 1241. United States Circuit Court of Appeals for the Ninth Circuit. Jerome P. Porter, John G. Jury, Thomas W. Chandler, Charles J. Carr and Mrs. Mary Thompson, Appellants, vs. Tonopah North Star Tunnel and Development Company, a Corporation, Appellee. Transcript of Record. Upon Appeal from the United States Circuit Court for the District of Nevada.

Filed September 1, 1905.

F. D. MONCKTON,
Clerk.



Complainants' Exhibit No. 3.

[Endorsed]: No. 771. U. S. Cir. Court, Dist. of Nevada. Jerome P. Porter et al. v. Tonopah North Star Tun. and Develop't. Co. Photographic View of Ground in Controversy. Complainants' Exhibit No. 3. Filed July 11, 1904. T. J. Edwards, Clerk.

No. 1241. U. S. Circuit Court of Appeals for the Ninth Circuit. Complainants' Exhibit 3. Received September 1, 1905. F. D. Monckton, Clerk.



Complainants' Exhibit No. 5.

[Endorsed]: No. 771. U. S. Cir. Court, Dist. of Nevada. Jerome P. Porter et al. v. Tonopah North Star Tun. and Devel. Co. Photographic View of Ground in Controversy. Complainants' Exhibit No. 5. Filed July 11th, 1904. F. J. Edwards, Clerk.

No. 1241. U. S. Circuit Court of Appeals for the Ninth Circuit. Complainants' Exhibit 5. Received September 1, 1905. F. D. Monckton, Clerk.

No. 1241

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

OCTOBER TERM, 1905.

JEROME P. PORTER, JOHN G. JURY,
THOMAS W. CHANDLER, CHARLES
J. CARR, and MRS. MARY THOMP-
SON,

Appellants,

vs.

TONOPAH NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY
(a Corporation),

Appellee.

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BRIEF FOR APPELLANTS.

GAROUTTE & GOODWIN,
WELLES WHITMORE,

Attorneys for Appellants.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE NINTH CIRCUIT.

October Term, A. D. 1905.

JEROME P. PORTER, JOHN G.
JURY, THOMAS W. CHANDLER,
CHARLES J. CARR, and Mrs. MARY
THOMPSON,

Appellants,

vs.

TONOPAII NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY
(a Corporation),

Appellee.

BRIEF OF APPELLANTS.

STATEMENT OF THE CASE.

This is a suit brought in support of an adverse claim and protest filed by the plaintiffs, Jerome P. Porter et al., in the United States Land Office at Carson City, Nevada, against the application of the defendant, Tonopah North Star Tunnel and Development Company, for a patent to certain mining ground situated in Tonopah, Nye County, Nevada, and to determine which of the parties has the better right to the ground in controversy.

The Dave Lewis Hope mining claim (also known as the "Mizpah Intersection" mining claim) was located August 26, 1901, by Dave R. Lewis and Chas. J. Carr; the Ivanpah Lode claim was located October 10, 1901, by F. M. Ish.

In September, 1903, the appellee applied for a United States mineral patent for the Ivanpah Lode claim, and within the statutory period the appellants, as owners of the Dave Lewis Hope claim, filed an adverse claim to the application and within thirty days thereafter commenced this suit in the United States Circuit Court for the Ninth Circuit, District of Nevada, to determine the rights of the respective parties.

The appellants allege ownership of a large and substantial part of the mining property claimed by the appellee. The appellee denies that the Ivanpah Lode claim trespasses upon the Dave Lewis Hope claim. Upon the issue, thus joined, the case was tried before the Honorable Thomas P. Hawley, presiding in the United States Circuit Court, Ninth Circuit, District of Nevada.

The appellants introduced evidence of their title by showing a location of the premises in controversy under the mineral laws of the United States and of the State of Nevada. They showed that the Dave Lewis Hope claim had been located August 26, 1901, by D. R. Lewis and C. J. Carr (Record, 61); that the notice of location had been duly recorded in the Tonopah Mining District Recorder's office and in the County Recorder's office for Nye County (Complainants' Exhibits Nos. 1 and 2, Record, 73-75); that all the requirements of the laws of the United

States and of the State of Nevada necessary to make a valid location had been complied with before any adverse rights had intervened (Record, 62 et seq.); that appellants have acquired and own all the rights of the original locators. (Record, 204, 206.)

The appellee undertook to show location of the Ivanpah Lode claim by F. M. Ish, October 10, 1901 (Record, 215); that the requirements of the laws of the United States and of the State of Nevada had been complied with (Record, 215 et seq.); that the ground was part of the public domain and unappropriated at the time the Ivanpah Lode claim was located (Record, 213); and that F. M. Ish conveyed said claim to the defendant (Record, 557).

UNDISPUTED FACTS.

The uncontroverted facts, appearing from the record, may be summarized as follows: The Dave Lewis Hope claim is on the westerly side of Mount Oddie in the Tonopah Mining District. The vein has a northerly and southerly course; a cross-cut, equivalent in size to a shaft four by six feet, by ten feet deep, was made on the vein about February 1, 1902, at a point forty feet north of the point where the appellee subsequently sank a shaft; a certificate of location of the Dave Lewis Hope claim was made, filed, and recorded in May, 1902, at which time the claim was surveyed, re-staked and monumented and the cross-cut above mentioned enlarged; Lewis and Carr conveyed the claim to the appellants; the Ivanpah claim was located by Frank M. Ish on October 10, 1901; this claim was lo-

cated on the westerly side of Mount Oddie in the Tonopah Mining District; the vein has a northerly and southerly course; a cross-cut, equivalent in size to a shaft four by six feet, by ten feet deep, was made on the vein in December, 1901; the claim was surveyed, staked, and monumented; and the appellee has acquired the title thereto.

While there is some conflict in the evidence as to the *precise location* of the discovery monument of the Dave Lewis Hope claim, all the evidence shows that the Ivanpah laps over the Dave Lewis Hope from twenty-five per cent to ninety per cent of its surface area.

Further, the appellants contend that the Ivanpah notice of location recorded in the Tonopah Mining District, January 8, 1902, and in Nye County, February 8, 1902, was not such "certificate of location" as the statutes of Nevada required. This location notice is not signed by anyone. (Record, 227.)

The Court held that the appellants failed to establish the validity of the Dave Lewis Hope claim, or that it includes any portion of the ground embraced within the boundaries of the Ivanpah location. (Record, 51). The Court also held that if a locator is satisfied with his original location notice he can file the same within ninety days and call it his certificate of location. (Record, 53.)

The case comes before this Court on appeal from the judgment.

ARGUMENT.

The ground in controversy is situated on the westerly side of Mount Oddie, near the base of which the first discoveries of mineral in that district were made by J. L. Butler, who located the claims which composed the original Butler group of mines.

There are on Mount Oddie what are termed "hog backs" or ridges that unite at the summit of the mountain; one runs in a northerly direction; one in a southerly direction, and a third in a westerly direction. (Record, 223, 327). The last named ridge is the one referred to in this litigation.

The Dave Lewis Hope claim was located on the westerly slope of Mount Oddie August 26, 1901, by David R. Lewis and Charles J. Carr (location notice,, Record, 73-75, 451, and Complainants' Exhibit No. 17, Record, 577).

The Ivanpah claim was also located on the westerly side of the same mountain, October 10, 1901, by Frank M. Ish (Defendant's Exhibit "B," Record, 227).

Lewis was at least sixty years of age (Record, 391), and his business was that of prospector (Record, 380). He died in the fall of 1903 (Record, 435).

Carr was one of the pioneers of the Tonopah Mining District and located some of the most valuable mining properties there. (Record, 59, 60.)

Ish is experienced in mining, having been engaged therein since 1880 (Record, 271). In the Tonopah Mining District he located only the "Ivanpah Lode claim."

The testimony shows conclusively that the Dave Lewis Hope claim was located by Lewis and Carr on August 26, 1901. See testimony of

Carr, Record, 61, 71, 73, 101, 210.

Ish, Record, 214, 223, 226, 231, 245.

Ray, Record, 277.

Salsberry, Record, 324.

Ramsey, Record, 472.

The location notice was recorded September 2, 1901, in Book E, pages 123, 124, of Mining Locations, Nye County, Nevada Records (Record, 73); and on same date in Book B, page 119, Tonopah Mining District Records (Record, 74).

The testimony also shows that the location post and monument were on the "hog back" or ridge that runs westerly from the summit of Mount Oddie. See testimony of

Ish, Record, 223, 226, 236, 245.

Ray, Record, 277.

McCune, Record, 307.

Salsberry, Record, 324, 328, 332.

Harris, Record, 382, 385.

Davis, Record, 413, 431.

Golden, Record, 454, 462.

Ramsey, Record, 471.

Booker, Record, 492.

While all the testimony shows that the Dave Lewis Hope location monument was on the "hog back" or

ridge running westerly from the summit of Mount Oddie, there is considerable variance in the testimony as to the *distance* of that location monument from the summit of the mountain.

The testimony offered by the appellants showed that the monument was on the "hog back" at a point 300 feet northerly from the cut made by McCune and Enright upon the Dave Lewis Hope claim for the locators thereof in February, 1902, which would bring the discovery post about 600 feet from the summit of Mount Oddie, while the appellee claims the monument was northeasterly from said cut, the distance from the summit of Mount Oddie varying according to the judgment, disposition, and zeal of the defendant's witnesses. See testimony of

Ray, over 125 feet (Record, 284).

Salsberry, a little over 200 feet (Record, 326).

Harris, close on to 200 feet (Record, 385).

Golden, 75 or 100 feet (Record, 454).

Ramsey, about 250 feet (Record, 471).

Booker, 200 to 250 feet (Record, 492).

The location notice seems to fix the *locus* of the claim so that there can be no misunderstanding about its precise situation.

The notice says:

"This mine is situated in the hill or mountain east of the group of mines known as the Tonopah mines

owned by J. L. Butler and Co." (Complainants' Exhibit No. 1, Record, 73.)

Oddie testified that in the fall of 1901 he had charge of the Butler group of mines which consisted of the Mizpah, Silver Top, and Desert Queen claims (Record, 358), and that the Mizpah claim is the best known claim in the district (Record, 357).

Ish also testified that the Mizpah is the best known claim in the district (Record, 292), and that it is a notorious fact that the Mizpah was located by Butler (Record, 294).

The phrase "east of" means adjoining on the east side.

The nearest approach to a judicial adjudication of the phrase "east of" that has come under our notice is the case of *Lawrence vs. Kidder*, wherein it was held that "west of" of the City of Albany meant west of a meridian line drawn from the north to the south through the City of Albany.

Lawrence vs. Kidder, 10 Barb. 641, 652.

The *Century Dictionary* defines "of" as: "In distance from; away from; measuring from; Switzerland is north of Italy."

To enable the Court to better comprehend the relative situation of the Dave Lewis Hope and Ivanpah claims we have inserted at the end of this brief a map made from a duly certified copy of the plat filed by the appellee with its application for patent on which is

shown in red ink the Dave Lewis Hope claim according to the certificate of location thereof made and recorded in May, 1902.

The Dave Lewis Hope claim was located in the manner provided by law, by making a discovery of mineral (Record, 76); by posting a notice of location upon the ground at the point of discovery (Record, 71, 72, 101, 211); by marking the boundaries (Record, 61, 64, 101); and by doing the requisite amount of discovery work (Record, 80, 106).

On or about February 1, 1902, a cross-cut 4 feet wide, 15 to 18 feet long, with a face 7 or 8 feet high, was made on the vein close to where the North Star shaft was subsequently sunk (Record, 306, 322).

Chandler was on this ground in May, 1902, which was then known as the Dave Lewis Hope claim, with his wife, and Mrs. Thompson, Porter, Carr, and Lewis (Record, 121), and said persons were stationed at various posts on the ground and while so stationed a photograph of the ground was taken and Chandler marked on the photograph (Complainants' Exhibit No. 3, Record, 599) the positions occupied by the different persons thus: L. for Lewis; C. for Chandler; T. for Mrs. Thompson; W. of C. for Mrs. Chandler; P. for Porter; Carr for C. J. Carr (Record, 123, 124); Chandler also received a letter from Frank Golden dated November 10, 1902, in which Golden said that the "Ivanpah claim took in all the Dave Lewis claim" (Record, 126).

In April, 1902, Lewis took Porter up on the ground and showed him the south center post of the Dave

Lewis Hope claim which was on the Mizpah ground near the east center post of the Mizpah (Record, 158, 160, 161); Lewis also took him around the exterior boundaries of the claim and showed him the various rock monuments in which were stakes and tin cans (Record, 161-163); in some of the cans he found marks and in others he did not (Record, 162, 163); Porter had a bond upon the claim (Record, 158), and prior to May 17, 1902, he had acquired an interest in the property (Record, 162); before doing any further work upon the claim he had a photograph taken of the cut as it was at that time (Record, 159, and Complainants' Exhibit No. 5, Record, 601); thereafter he enlarged the cut and sank a shaft therein, expending more than one hundred dollars in such work (Record, 160); Lewis was with Porter at the time he was doing this work (Record, 160). About May 17, Porter prepared a certificate of location but did not change the location of the south center post of the claim (Record, 162).

The southwest corner of the claim was about 200 feet upon the Mizpah claim (Record, 185).

R. A. Vaughn, with Porter's assistance, surveyed the claim in May, 1902, and Porter marked the stakes (Record, 196); after he had surveyed and re-staked the claim he stationed Mrs. Thompson, Mrs. Chandler, Carr, Lewis, Chandler, and himself at different posts on the claim and had a photograph taken (Record, 172; and Complainants' Exhibit No. 3, Record, 599). The point "P" on the photograph represents the southeast corner; "Carr" the east center post; "L" the west center post;

“T” the south center post; “W. of C.” the east center post of the Mizpah (Record, 172); “C” the southwest corner Dave Lewis Hope (Record, 203).

Lothrop & Davis attached Carr’s interest in the Dave Lewis Hope claim in the spring of 1902 (Record, 120), notices were posted on two monuments marked “Dave Lewis Hope claim” (Record, 206, 207); one monument was the south center post and the other was the discovery post on the ridge 1000 feet north 8 degrees west from the south center post (Record, 207, 208). Thus showing that this ground was generally recognized as the Dave Lewis Hope claim.

Shortly after Porter had surveyed and re-staked the Dave Lewis Hope claim the defendant entered upon the claim and began sinking a shaft, whereupon Porter served a trespass notice upon the defendant (Complainants’ Exhibit No. 16, Record, 500).

A copy was served upon Golden by registered mail and Porter received Golden’s registry receipt therefor (Record, 488, and Complainants’ Exhibit No. 14, Record, 576). Golden denied having received such a notice, but admitted his signature to the registry receipt (Record, 457); after admitting his signature to the receipt Golden denied all knowledge of the notice (Record, 465); he was particularly emphatic, saying “never knew it in my life” (Record, 466); Golden’s denials hardly had time to cool when the senior counsel for the defendant made the following admission:

“We will admit that he [Porter] served it [trespass

notice] upon a duly authorized agent of the North Star Tunnel Company, and it is in the words and figures of the adverse" (Record, 488).

Up to the first of June, 1902, Lewis and Carr and their grantees were in open and notorious possession of the Dave Lewis Hope claim and no one interfered or attempted to interfere with their peaceful enjoyment thereof (Record, 160, 196).

Judge Hawley in his opinion said:

"The testimony on behalf of the complainants as to the place where the discovery monument of the Dave Lewis Hope was erected, and as to where the notice was posted, taking the directions and distances mentioned in the notice, would so locate the land as to include a portion of the ground embraced in the Ivanpah location." (Record, 41.)

"On the other hand, under the testimony of the defendant, the discovery monument with the notice thereon of the Dave Lewis Hope, would locate the ground entirely without the premises covered by the Ivanpah location, and would not include the cut claimed to have been made by the locators of the Dave Lewis Hope." (Record, 41.)

Surely, the learned Judge has misapprehended the evidence offered by the defendant, for all the testimony shows that there is an overlapping of the Ivanpah upon the Dave Lewis Hope. All witnesses for defendant testified that the "cut" near the North Star shaft was made by and at the expense of the locators of the Dave Lewis Hope. Not a single witness attempted to deny it.

Admitting for sake of argument only that the Dave Lewis Hope discovery monument was at the point on Mount Oddie testified to by a number of witnesses for the defendant, who place it about 200 or 250 feet west of the summit of Mount Oddie, and the two claims must lap. The deed from Ish to the defendant, dated July 15, 1902 (Defendant's Exhibit "H," Record, 557), describes the property thus:

"All that certain mining claim, known and recorded as the 'Ivanpah Quartz Mining Claim,' said claim being situated upon the west slope of Oddie Mountain, about two hundred feet below the summit, being the same located by the grantor on the 10th day of October, 1901."

This brings the east line of the Ivanpah 200 feet west of the summit of Mount Oddie, and the center line of the Dave Lewis Hope, 200 or 250 feet west of the same summit, and the two claims lap each other 350 to 400 feet. On the other hand appellate ^{ants'} ~~ans~~ witnesses place the discovery post 300 feet north of the cut near the North Star shaft. This would bring the east line of the Dave Lewis Hope exactly where some of defendant's witnesses have located the discovery post, which seems to indicate that the so-called discovery post is an east line post. John McCune, a witness for the defendant whose testimony Judge Hawley declares "is very strong" (Record, 48), placed the discovery post of the Dave Lewis Hope 300 feet north of the cut near the North Star shaft (Record, 307, 318). R. B. Davis, another witness for defendant, also located the discovery post of the Dave Lewis Hope about 300 feet north of the same cut (Record, 431). F. M. Ish, the locator of

the Ivanpah claim, also testified that the discovery post of the Dave Lewis Hope claim was about 300 feet north of the North Star shaft (Record, 236).

This testimony all goes to prove that the discovery post of the Dave Lewis Hope claim was originally placed where Porter testified it was, and where appellants claim it was.

The letter written by Frank Golden, president of the corporation defendant, also admits that the Ivanpah claim took in all the Dave Lewis Hope claim (Record, 126).

It is well settled that stakes once properly set, have served their original office and their subsequent removal or obliteration not done by the act of the locator does not vitiate the claim.

Jupiter M. Co. vs. Bodie Cons. M. Co. (1881), 11 Fed. 666.

McEvoy vs. Hyman (1885), 25 Fed. 596.

Book vs. Justice Co. (1893), 58 Fed. 107.

Smith vs. Newell (1898), 86 Fed. 56.

As was said by the learned chancellor in *Tonopah & Salt Lake M. Co. vs. Tonopah Mining Co.* (1903), 125 Fed. 389, 418, the locators cannot be legally deprived of their rights by any "juggling" of posts and monuments. In the present case as well as in the one just cited there is nothing in the testimony showing that the owners of the Dave Lewis Hope ever put the Dave Lewis Hope discovery monument at a point near the summit of Mount Oddie, and how it got there is apparently a mystery. In the case of *McEvoy vs. Hyman*, Judge Hallett said:

“And I think the discovery cut is to be recognized as a monument so far, at least, as to include it within the claim. When the point of discovery is marked, as required by the statute, to exclude it from the claim would be most extraordinary. For, as the discovery is essential to a valid location, it must be presumed that the locators intend to secure that point in preference to all other parts of the claim.”

McEvoy vs. Hyman, 25 Fed. 596-600.

Now, as to witnesses who saw stakes and witnesses who did not see them, attention is invited to the case of McEvoy vs. Hyman (*supra*) in which Judge Hallett held:

“Assuming that all witnesses were equally worthy of credit, those who testify affirmatively that they put the stakes in position, or they that saw them in place, must be taken to have better knowledge of the subject than those who say that the stakes could not be found.”

Again the witness Booker—defendant’s witness—a United States Deputy Mineral Surveyor who is accustomed to look for and observe stakes and markings thereon, testified that he surveyed the Ivanpah for patent and that he never saw the so-called “discovery post” of the Dave Lewis Hope up near the summit of Mount Oddie until the latter part of October, 1903 (Record, 493). He also testified that this particular post was marked “August 26th, the center line Lewis Hope,” and that a word had been obliterated from the marking, etc. (Record, 492).

The way Booker happened to see that post was also

peculiar. Mr. Ramsey, vice-president of the defendant company, asked him to measure the distance from the summit of Mount Oddie to that post (Record, 492).

We also call the Court's attention to the photograph of the Dave Lewis Hope claim that has been put in evidence in this case (Complainants' Exhibit No. 3, Record, 599), taken in connection with the description of the posts and monuments and the markings thereon given by our witness Porter (Record, 172, 203),

According to the testimony of Ray (defendant's witness), the Dave Lewis Hope monument could not have been near the summit of Mount Oddie, during the month of September, 1901 (Record, 279), for he testified that he was over all that ground almost daily during that month, and yet he testified that he *first* saw that monument the 12th or 13th of October, 1901 (Record, 275, 277).

Although the defendant's witnesses (Ish, Record, 223; Ray, Record, 284; Ramsey, Record, 474), testified that the alleged Dave Lewis Hope discovery monument remained at a point near the top of Mount Oddie from October, 1901, to July, 1904, the defendant did not produce a single witness aside from its own stockholders and officials to so testify except Booker, and his testimony was that he did not see it at that point until the latter part of October, 1903 (Record, 493), more than two years after the stockholders and officials of the defendant company testify to have seen it.

The North Star Tunnel site was located October 8, 1901, and the line was monumented the same date (Record, 234, 331, 332), but the defendant produced no witness who saw the alleged Dave Lewis Hope monument near the summit of Mount Oddie prior to October 9, 1901.

The North Star Tunnel line was so located that it went directly through the Dave Lewis Hope ledge (Record, 234, 390).

The Ivanpah claim was so located that it embraced the Dave Lewis Hope ledge (Defendant's Exhibit "B," Record, 227).

Ish did not do the location work on the Ivanpah until more than ninety days after August 26, 1901, and he testifies that he went over the ground before doing that work to see if further stakes had been put up (Record, 250, 252).

The defendant has done no development work on the Ivanpah vein, but has expended thousands of dollars on the Dave Lewis Hope vein (Record, 389, 390).

The defendant took forcible possession of the Dave Lewis Hope claim on or about June 10, 1902, against the protest of the plaintiffs (Complainants' Exhibit No. 16. Record, 500), and prevented plaintiffs from surveying said claim in January, 1903 (Record, 480).

R. B. Davis, at the instance of Golden, the president of the defendant company, secured a quitclaim deed from Lewis, June 28, 1902 (Record, 433, 434), less than three

weeks after the service of the trespass notice on Golden (Complainants' Exhibit No. 16, Record, 500), and Davis subsequently conveyed to defendant (Record, 404), but the defendant did not place the deed of record in Nye County (see Abstract of Title to Dave Lewis Hope, Record, 506 et seq.).

There is one post in the boundary of the Dave Lewis Hope claim about the position of which there is no substantial conflict of evidence. We refer to the south end center post which is placed at or near the east end center post of the Mizpah. That is a well-known fixed point and from that point the Dave Lewis Hope claim extends north 8 degrees west 1,500 feet (Record, 96, 162, 206, 207, 239, 311, 312; also Complainants' Exhibit No. 3, Record, 599, and annexed map).

One more suggestion and we leave this branch of the case. There seems to be some confusion about the real meaning of the term "apex" as used in appellants' certificate of location (Record, 170), and in the testimony of the various witnesses. The term is used to signify the summit of the "hog back" or ridge, and not to indicate the summit of Mount Oddie. The Century Dictionary defines *apex*, in a mining sense to be, "The landing point at the top of a slope." It is the top of the "hog back" or ridge. It is a line, and extends the whole length of the "hog back" that runs westerly from the summit of Mount Oddie.

LOCATION WORK ON DAVE LEWIS HOPE CLAIM.

It is not essential to the validity of the Dave Lewis Hope claim that the location work or other requirements of the statutes of Nevada should have been complied with in order to prevail over the location of the Ivanpah claim, for it is well-settled that, until a mining claim has been abandoned or forfeited, no other location can be made on the same ground.

All the rights of a locator on the public domain during the period allowed by law to complete his location and the record of the same are protected to him.

No right can be initiated on public land while there is an existing location thereon.

The statutes of Nevada allow a locator ninety days within which to complete and perfect his location and the record thereof (Section 210, Cutting's Compiled Laws, Nevada).

As was said by Judge Hawley in his opinion in this case:

“Two locations cannot legally occupy the same space at the same time. However regular in form a junior location might be, it is of no effect as against the rights conferred upon the prior locator so long as the prior location is subsisting.

“These principles were announced by the Supreme Court in *Belk vs. Meagher*, 104 U. S. 279, 284, in 1881, and repeated in numerous decisions, including *Del Monte M. Co. vs. Last Chance M. Co.*, 171 U. S. 55, 79, decided in 1897, and have always been followed by the national courts,

and are too well settled to require discussion.” (Record, 40.)

The Dave Lewis Hope location was made August 26, 1901, and the locator had by law ninety days in which to do his location work. During that period every right was protected and no valid location could be made on the ground covered by that location. The Ivanpah location was made, covering the ground covered by the Dave Lewis Hope, on October 10, 1901, within the ninety days allowed the locators of the Dave Lewis Hope to do their location work.

It, therefore, follows that the ground covered by the Dave Lewis Hope was not unoccupied public land and was not open to location and the Ivanpah location acquired no right to the land, and when Dave Lewis did that work in February, 1902, no one having acquired a right to the ground in the *interim* after the expiration of ninety days from August 26, 1901, and the time of doing the work in February, 1902, that work perfected his location and protected his rights thereunder.

No right can be initiated by force or clandestine entry and defeat the rights of a prior lawful locator.

In short, while there is a subsisting location on mining ground no person can place a second location on the same ground, in anticipation of an abandonment or forfeiture of the first location, and after such abandonment or forfeiture has actually taken place claim rights under the second location. The second location was void *ab initio*, and cannot be revived.

When F. M. Ish made his location of the Ivanpah the ground was not open to location. He never made any subsequent location and he never acquired any rights in the Dave Lewis Hope ground.

Belk vs. Meagher, 104 U. S. 279, 284.

Del Monte M. Co. vs. Last Chance M. Co., 171 U. S. 55, 79.

The opinion of the court below said:

“If the amended certificate of location of the Dave Lewis Hope claim had been made and recorded within the ninety days provided by the statutes, or at any time thereafter before the Ivanpah was located, then it might be claimed that the record notice thereof would have been *prima facie* evidence of its own sufficiency.” (Record, 51.)

Appellants contend, with confidence that the learned Judge is in error—that he overlooked one important fact, which is the fact that the Ivanpah location was made *before* the ninety days expired, at a time when the ground was not open to location and is for that reason void. The initial step to acquire a right to the Dave Lewis Hope ground has never been taken by the appellee or its grantors, and all subsequent acts are unavailing.

The amended certificate of location of the Dave Lewis Hope claim was recorded and perfected the title of the Dave Lewis Hope, before the Ivanpah acquired any rights in the ground.

The Court in its opinion further says:

* * * * *

“The fact that no amended location of the Ivanpah ground was made within the ninety days after the location, cannot be taken advantage of by the complainants under the facts of this case. I do not understand the law to be, in cases where the original notice is clear, definite and certain, and the boundaries of the claim so marked and monumented that the same can be readily traced and determined, that it is necessary for the locator thereof to file an amended certificate of location, as required by sections 210 and 213, *Cutt. Comp. L. Nev.*” (Record, 52.)

* * * * *

“But if the locator is satisfied with his original notice, he can file the same within ninety days, and can call it his certificate of location.” (Record, 53.)

It is not the contention of the appellants that a locator is required to file an *amended* certificate of location within ninety days from the date of his location, but that he *must* file within that time a certificate of location in order to perfect his location.

The statutes of Nevada require such certificate to contain:

1. The name of the lode or vein.
2. The name of the locator or locators.
3. The date of the location and such description of the location of said claim, with reference to some nat-

ural object or permanent monument as will identify the claim.

4. The number of linear feet claimed in length along the course of the vein each way from the point of discovery, with a width on each side of the center of the vein, and the general course of the lode or vein as near as may be.

5. The dimensions and location of the discovery shaft, or its equivalent, sunk upon the claim.

6. The location and description of each corner with the markings thereon.

Any record of the location of a lode mining claim which shall not contain all the requirements named in this section shall be void.

(Section 210, Cutting's Compiled Laws, Nevada.)

The question raised by the appellants is the sufficiency of the alleged "certificate of location" of the Ivanpah claim which was recorded January 8, 1902, in the Tonopah District Recorder's office (Defendant's Exhibit "B," Record, 227), and in the Nye County Recorder's office, February 8, 1902 (Defendant's Exhibit "H," Record, 552). It is contended by the appellants that the alleged certificate failing to describe the discovery shaft sunk on the claim, and the location and description of the corner posts, with the markings thereon as required by the Nevada statute, irrespective of the fact that the ground was not subject to location, is void although the evidence may show a com-

plete compliance with every other requirement of the Federal and State laws.

A compliance with all the requirements of the Federal statutes regarding the location of mining claims is not sufficient to establish a location, when those statutes are supplemented by State regulations, not in conflict therewith.

The law of Nevada regarding a certificate of location is almost identical with the declaratory statement required by section 3612 of the Political Code of Montana.

The Supreme Court of Montana has repeatedly held that if the declaratory statement does not contain all the elements prescribed by section 3612 of the Political Code, the location is of no value.

Purdum vs. Laddin, 23 Mont. 387.

Metcalf vs. Prescott, 10 Mont. 283.

O'Donnell vs. Glenn, 8 Mont. 248.

Hahn vs. James, 73 Pac. 965.

Wilson vs. Freeman, 75 Pac. 84.

The law governing certificates of location of mining claims is now settled by a recent decision of the Supreme Court of the United States wherein the identical questions involved in this case have been passed upon. The case to which we refer was taken from the Supreme Court of the State of Montana, and holds in effect that a strict compliance with the statutory provisions of the State governing certificates of location is required to make a valid location of a mining claim. We call especial attention to the

case of *Butte City Water Co. vs. Baker*, 196 U. S. 119, and trust the Court will examine the same.

Appellants have been very much hurried in the preparation of this brief and have, therefore, confined it to the main points relied on for a reversal of the judgment. We do not, however, abandon any of our assignments of error, but we reserve the right to argue the same, orally, at the final hearing before the Court.

In conclusion, appellants ask that this case be reversed and that they be granted a new trial.

Respectfully submitted,

GAROUTTE & GOODWIN,

WELLES WHITMORE,

Attorneys for Appellants.

No. 1241

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

OCTOBER TERM, A. D. 1905.

JEROME P. PORTER, JOHN G. JURY,
THOMAS W. CHANDLER, CHARLES J.
CARR AND MRS. MARY THOMPSON,

Appellants.

vs.

FILED
OCT 16

TONOPAH NORTH STAR TUNNEL AND
DEVELOPMENT COMPANY, (a Corpora-
tion),

Appellee.

BRIEF FOR APPELLEE.

K. M. JACKSON,
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October Term, A. D. 1905.

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TONOPAH NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY
(A CORPORATION),

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No.
1241.

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

The appellee made application in the United States Land Office for a patent to the "Ivanpah" Quartz Claim, situate in Tonopah, Nevada. The appellants filed an adverse claim in said Land Office, and in support thereof brought suit in the United States Circuit Court, District of Nevada, asserting that the "Dave

Lewis Hope" Claim (later re-named the "Mizpah Intersection"), owned by them, had the better right. The case was tried before the Hon. Thos. P. Hawley, and a decree was made and entered in favor of the appellee, February 20th, 1905.

ARGUMENT.

We cannot agree to many of what are called in Appellants' Brief, at page 3, "Undisputed Facts," nor in many of the statements alleged to be facts in the argument of appellants.

We specially assert that the plat attached to the Appellants' brief is incorrect in essential features, and that the same was not copied correctly from the plat in the Record at page 514 thereof.

At the trial more than twenty witnesses testified orally, and a great many documents were introduced in evidence. The testimony of the witnesses from time to time was illustrated by blackboard diagrams drawn in open Court. From our point of view the appellants utterly and signally failed to establish a location upon any specific part of Oddie Mountain. The appellee showed clearly and conclusively a location, to-wit, the "Ivanpah," notice of which was posted about October 10th, 1901 (Record, 212), and fixed the locus thereof upon the ground so that its boundaries could be readily traced, and, while there was some delay in carrying out some of the provisions of the Nevada statute, the enact-

ments thereof were all finally and before any intervening rights, fully complied with.

It was claimed by appellants that the "Dave Lewis Hope" claim was located August 26th, 1901 (Record, 61) ; that thereafter some work was done thereon in the effort to comply with the Nevada statute. The location was claimed to have been made by C. J. Carr and David R. Lewis. Prior to the time of the trial D. R. Lewis had passed away, and Charles J. Carr was the only witness as to what work was done, where it was done by him, and as to where he placed certain notices and monuments. Nearly all of the material statements made by Carr were contradicted by from eight to ten witnesses and, further, he was impeached as to his general character for truth, honesty and integrity by a large number of sterling men of affairs.

Judge Hawley in his opinion stated that the testimony upon many points was more or less conflicting and in many respects unsatisfactory, and that there was more or less uncertainty in the testimony upon all the controlling questions of fact involved in the case.

It was the effort of the complainants at the trial to locate their claims so that there would be an overlap of the "Dave Lewis Hope" and the "Ivanpah," but where said "Dave Lewis Hope" claim was originally or at any time located, we assert can not be determined from the evidence. In their brief counsel say that the "Dave Lewis Hope" claim was located on the westerly slope of Mt. Oddie, August 26, 1901, and refer to the "Dave

Lewis Hope" location notices at pages 73-75 of the record. The location notice at page 73 of the record recites: "This mine is situated in the hill or mountain east of the group of mines known as the "Tonopah mines owned by J. Butler and Co.," and that it was in the Tonopah Mining District. All that this shows, we submit, is that the mine was in a hill or mountain, which hill or mountain was east of the Tonopah group of mines. Further the location notice, which was recorded in the County Recorder's office, says the lode is supposed to run northwest and *southeast*, and at page 75 of the record the notice recorded in the mining records says that the lode is supposed to run northwest and *southwest*. That was the contest during the entire trial,—that the "Dave Lewis Hope" (or Mizpah Intersection) claim was somewhere, but where the Court was unable to determine, and so stated in its opinion. We understand that the rules of law make it incumbent upon the appellants to establish by competent evidence the exact location of their claim upon the ground. This they were absolutely unable to do, as there was conflict between their own witnesses, as well as a sharp conflict with the witnesses on their side as against those for the defendant.

For instance, the witness Ray testified that the "Dave Lewis Hope" claim was to the east (Record, p. 277) of the "Ivanpah"; that it did not cover the same ground, but that there was no chance for a claim between (Record, p. 278).

The witness Ish (Record, p. 223) says that, from the "Ivanpah" new North Star shaft it must have been five or six hundred feet up on top of the hill to the "Dave Lewis Hope" location place. Also, he says (Record, p. 226) that the cut made by Ray would be fifty or one hundred feet outside of the place where the west lines of the "Dave Lewis Hope" could have been.

The witness Salsberry (Record, p. 333) says that the two locations cover different ground altogether, and the witnesses F. Golden, W. J. Harris, Booker, R. B. Davis and others, make statements to the same effect.

As stated before, the witnesses illustrated their testimony by photographs, some of which have not been reproduced in the record, and by diagrams on the blackboard; and thus the trial Court was able to get a grasp and understanding of the case which is not obtainable from the record filed in this Court.

Taking the witnesses' explanations on the stand, with references to the blackboard and diagrams, and their declarations that the locations actually cover different ground, and the burden being on the complainants to make out a case against conflicting evidence, the fact that the main witness for complainants was impeached, that his testimony was contradictory of itself, that the other main witnesses for complainants (Porter and Caper) in their respective testimony made many different contradictory statements, we contend that the trial Court could not arrive at any other conclusion than it did. We regret that so much labor must be imposed

upon the Court in this case, as it will be necessary to read a large part of the testimony, in order to compass the same, as isolated extracts taken from the record, where sometimes the witnesses and counsel were at variance as to the ground respecting which the question was asked or answered, cannot give a true insight into the point of view of the trial Court.

The appellee claims under a location made October 10th, 1901, by F. M. Ish, and certain work shown to have been done thereafter in compliance with the laws of the United States and of the State of Nevada. It appeared from the testimony of the witness W. J. Harris that the appellee had expended, prior to the time of the trial, about seventy thousand dollars (Record, 389), and it was the contention of the appellee at the trial and it is its contention here, that an attempt was being made to float the "Dave Lewis Hope" claim westerly over on to the "Ivanpah" ground; that Carr had attempted some kind of a location somewhere, but where it was incumbent for appellants to show. If the apex of a mountain is not where it comes to a point at the top or summit, we think it is for the complainants to show upon which of the tops or apices of Mount Oddie the "Dave Lewis Hope" was located, because the photograph shows several apices or tops of the mountain, and only shows one view thereof. It can be readily supposed that there are other hogsbacks outside of the camera lens. Without the aid of a dictionary we have

always understood that the apex of a mountain was its top, and that is the ordinary and usual definition of the term as given by the Century dictionary, to-wit: "the top, point or summit of anything;" and was, we submit, the sense in which the same was used throughout the trial.

Respecting the cut or preliminary work done on the "Dave Lewis Hope" location, attempted to be located August 26th, 1901, Carr testifies (at page 106) that the cut that he made there with his co-locator, Dave Lewis, was right alongside of his location monument (Record, p. 106 top), and that the location monument was on the ledge that he claimed (Record, p. 106 top); that his work was a cross-cut about fifteen feet long, eight feet high and five feet wide (p. 80); that the monument was on the top side of the cut up hill from it (Record, p. 107). Porter testifies that he saw this same cut in November, and that in May he went back and did work on the same (Record, pp. 157-8).

Ish says that the alleged "Dave Lewis Hope" and the "Ivanpah" are on different leads and never come within 100 feet of one another and continue to diverge as they go north (Record, p. 271). The croppings have a different strike (p. 270). Ish did not, however, think the "Dave Lewis Hope" was on a ledge, it was simply a discolored streak in the rhyolite (p. 269 bottom), while Ramsay says there was nothing but manganese where Carr claims his cut was (Record, p. 473 bottom).

Counsel, at page 16 of Appellants' brief, criticize the

production by the defendant of witnesses who were stockholders and officers of the company. It strikes us that, from the plenitude of people at Tonopah, the only disinterested witnesses produced by appellants being Martin Caper and Young, that they should not complain because appellee produced only seven times as many.

Counsel also says, at page 17, that the "Ivanpah" was so located that it embraced the "Dave Lewis Hope" ledge, and cites Defendant's Exhibit "B" (p. 227), which is our certificate of location, filed January 8th, 1902. It does not mention or refer by a single word to the "Dave Lewis Hope" claim or anything connected with it.

They also say that no development work was done on the "Ivanpah," and that thousands of dollars were expended on the "Dave Lewis Hope" claim, and cite the record at pages 389-390, at neither of which pages, nor anywhere else, is there a word to the effect that the appellee ever worked on the "Dave Lewis Hope" at all. The testimony does show, however, that in June, 1902, the defendant began work on the "Ivanpah" vein, in sinking the new North Star shaft (Golden, p. 457; Harris, p. 389). This work was done several hundred feet southerly of the preliminary location work or cut of Ish. Counsel say that defendant took forcible possession of the "Dave Lewis Hope" claim on or about June 10th, 1902, against the protest of plaintiffs, and prevented plaintiffs from surveying said claim in June, 1903. There is no evidence at any place in the record that the

plaintiff ever took forcible possession of the "Dave Lewis Hope" claim or that they ever took forcible possession of any other claim, nor was their possession of the "Ivanpah" held by force. Complainant sent a notice that appellee was trespassing upon their so-called "Dave Lewis Hope," or "Mizpah Intersection," claim, on or about June 10th, 1902, to which no attention was paid by the appellee, and that is all there is in the vigorous and unfair language used in appellants' brief.

As to the surveying of the claim, Mr. Booker, United States Deputy Mineral Surveyor (Record, p. 478), testified that he made an application to Mr. Pittman for permission to go upon the "Ivanpah" or "North Star" ground and make a survey or surveys of the so-called "Dave Lewis Hope," or "Mizpah Intersection" claim; that permission was granted to make the survey, and that he communicated the permission to Schuyler Dur-yea, agent and attorney for appellants, and that he—Booker—wished to proceed, but that employment was not forthcoming. This was in October, 1903. The witness further said that prior to this application, that he had heard while he was away that an employee of his had been sent to make a survey of the "Dave Lewis Hope" claim in January, and was prevented from doing so by some of the "North Star" people (see Record, pp. 480-481). Thus it will be seen that appellee was willing to permit the survey, but appellant did not wish one.

Counsel say in the last paragraph of page 20 of their brief:

“In short, while there is a subsisting location on mining ground no person can place a second location on the same ground in anticipation of an abandonment or forfeiture of the first location, and after such abandonment or forfeiture has taken place claim rights under the second location. The second location was void *ab initio* and cannot be revived.”

The most that is claimed by the appellant here is that the “Dave Lewis Hope” and “Ivanpah” overlap in part, and with that feature in view, and for the edification of counsel, with some hesitation we beg leave to call attention to a very late decision of the Supreme Court of the United States in *Lavignino vs. Uhlig*, decided May 29, 1905, 25th Supreme Court Reporter, 716. At page 720, it is said:

“Of course, the effect of the construction which we have thus given to Section 2326 of the Revised Statutes, is to cause the provisions of that Section to qualify Sections 2319-2324, * * * thereby preventing mineral lands of the United States which have been the subject of conflicting locations from becoming *quoad* the claims of third parties, unoccupied mineral lands by the mere forfeiture of one of such locations. In text books (Barringer & A., *Mines and Mining*, p. 306; Lindley, *Mines*, 2d Ed., p. 650), statements are found which seemingly indicate that in

“ the opinions of the writers, on the forfeiture of a senior mining location *quoad* a junior and conflicting location the area of conflict becomes in an unqualified sense unoccupied mineral lands of the United States without inuring in any way to the benefit of the junior location. But in the treatises referred to no account is taken of the effect of the express provisions of the Revised Statutes Sec. 2326.”

This opinion was quite a surprise to us. We doubt if it is applicable in any other than patent cases, but the case at bar is a patent case and this decision being the latest expression of the Supreme Court of the United States upon the subject, it, if not decisive in patent cases alone, will be the means of educating us to the errors that we have fallen into in applying many of the principles of mining law. Its application to this case would be decisive if it were admitted that there was an overlap of the two locations and it being admitted that Carr's notice of location was posted August 26, 1901, that he did not within 90 days or ever file a certificate of location as prescribed by the Statutes of Nevada; that he did not do in 1901, the work required by the Statute of Nevada—as was conclusively shown by the evidence; inasmuch as all the work claimed by him was a cross-cut exposing the ledge to a depth of not over eight feet, and the Statute says ten feet—and that the alleged work done in February was after the intervening “Ivanpah”-Ish rights. Therefore, the work in February was futile and Porter by his notice of May 17, 1902, could

not initiate a new location or a re-location,—because the “Ivanpah” intervened the first alleged acts of Carr and Lewis.

The “Ivanpah” people’s discovery cut was 800 feet Southerly of the North end line. In June of 1902 they started their new working shaft, about 400 feet southerly and called it the New North Star shaft, which was in line with their North Star Tunnel and thereafter filed a true and proper certificate of location based upon the Ish location of the “Ivanpah.”

In this connection we wish to refer to the cases cited from Montana by counsel for appellant and the case of *Butte City Water Co. vs. Baker*, 196 U. S., 119.

This latter case went up from Montana and the State Court below said:

“The next error alleged is that the Court erred in excluding the location of the defendant’s Keyno claim. We have examined this notice of location, and are satisfied it does not conform to the Statute of the State of Montana, or with the construction of this Court in the case of *Purdum vs. Ladden*, 23 Mont., 387. * * * We are satisfied, therefore, that the Court did not err in excluding the location notice of the ‘Kenyo’ claim” (p. 226). See *Baker vs. Butte City Water Co.*, 28 Mont., pp. 222, 226.

Therefore all that was decided below was that the location certificate was not admissible in evidence and that was all that was before the Supreme Court of the United States on appeal on that point.

We have been of the impression that under the Nevada Act, which provides for the making and recording of a location certificate, and further provides that any record of a location not containing the requirements shall be void, but that any record containing the requirements, or a copy thereof, duly verified or certified, shall be *prima facie* evidence of the facts therein stated, was penal in character, and should be construed strictly if any forfeiture of rights was urged. That the Act gave those who filed the certificate prescribed therein the right to use the same as *prima facie* evidence, but a failure to file the certificate containing all the requirements required by Statute, would deprive them only of the right to that *prima facie* evidence and force the parties claiming title to the mine to prove their location by other direct evidence. The law never favors a forfeiture, and we believed that the settled law was in conformity to the doctrine laid down in *Jupiter vs. Bodie*, 11 Fed. Rep., p. 680, by Judge Sawyer, that, "assuming the proposition that the miners have " authority to make a regulation or law by which " a mining claim may be forfeited by failure to record " the location thereof, that such regulation or right, in " order to effect a forfeiture must provide that such " failure to record shall work a forfeiture of the claim"; and quoting *Bell vs. Bed Rock T'o. M. Co.*, 36 Cal., 211, as follows:

"The failure of a party to comply with a mining rule

“ or regulation cannot work a forfeiture unless the rule
“ itself so provides.”

See *Emerson vs. McWhirter*, 133 Cal., 510.

Construing the Nevada Statute strictly, it does not provide for a forfeiture of the location, but merely deprives one of the benefit or favor of using *ex parte* a self-serving declaration as *prima facie* evidence, if a certificate is not made in compliance with the section. Failing compliance with the section, direct and primary evidence may be introduced of the acts required to carve out from the public domain a mining location. The Nevada Statute does not say a man shall lose his location—shall forfeit his claim.

But, if we have been wrong in taking that view of the Nevada mining law, we contend that our opponents should be measured by the same tapes with which they are endeavoring to fit our clothes. Applying the same arguments that they use to attack us, their location certificates (which we objected to) are void and therefore their location void, and for the two-fold reason:

First: An examination of the original and amended certificates of location disclose the following facts, viz.: The original location notice of the “Dave Lewis Hope” dated August 26, 1901, and filed for record on September 2, 1901, in the office of the County Recorder, recites that the undersigned has located 1500 linear feet on this vein or lode, supposed to run in a north-west and south-east direction (Record, 73), and wherein the locator claims 1000 feet southeasterly from “this monument,”

while the notice recorded in the office of the District Recorder of Tonopah Mining District recites that the vein or lode is supposed to run in a *northwest* and *southwest* direction from this monument, and running one thousand feet in a southeasterly direction. * * *

In the amended certificate contained in the abstract of title attached to the adverse of appellants (Record, p. 507), there appears the following:

“From the discovery point at the *discovery shaft* “there is claimed by me 1000 feet in a southeasterly “direction and *five hundred* feet in a northwesterly di- “rection * * *” while in certificate offered as De- fendant’s Exhibit A (Record, pp. 533-4), the direction is given as *southerly* and *northerly*, and the initial point is the “*discovery shaft or monument.*”

In Complainants’ Exhibit 6 (Record, pp. 168-9), the initial point is the *discovery monument*.

While still further in Complainants’ Exhibit C (Record, pp. 503-4) attached to his adverse, the initial point is the *discovery shaft*.

Again, in the certificate offered as (Defendants’ Exhibit G, Record, p. 550) the initial point is the discovery point at the *discovery shaft*, and the courses are given as *southeasterly* and *northwesterly*.

Further, there is no compliance with the statute of Nevada (Section 210), which requires (Subdivision 6th): “The location *and description*, of each corner with the markings thereon.”

Section 209 of the Nevada Statute, as amended in 1901, prescribes how the boundaries of a claim shall be marked, either by a tree or rock in place, or by setting a post or stone, *one at each corner* and one at the center of each side line. And further provides that when a post is used, "it must be at least 4 inches square, by four feet six inches in length, set one foot in the ground, with a mound of stones or earth four feet in diameter, by two feet in height around the post"; or where it is impossible to sink the posts, "they may be placed in a pile of stones" . . . "when a stone is used, not a rock in place, it must be at least six inches square and eighteen inches in length, set two-thirds of its length in the ground, which trees, stakes or monuments must be so marked as to designate the courses of the claims."

Compliance with the statute (Section 210, Subdivision 6) in this respect would require three things, with reference to the corners—i. e., their location, *description* and markings, and such description, we take it, must be made with reference to the provisions of Section 209.

The Century Dictionary defines description as:

"A marking out, delineation, copy, transcript, representation . . . representation by visible lines, marks, colors, etc."

A mere reference to a post marked "northwest corner 'Mizpah Intersection,' etc.," is simply a partial

compliance with the statute in relation to the marking and location, but an entire omission of the description of each corner required. Neither the size, height of post, nor whether set in mound or not, is given.

To illustrate, we beg to refer the Court to the description of the corners contained in our amended certificate of location (Record, pp. 538-9), and submit that the failure of the appellants to comply with the Nevada statute in their certificate, rendered it invalid.

See

Hahn vs. James, 73 Pac. Rep., 965 (Montana).

Again, under the provisions of Section 209 of the Nevada Statute as amended in 1901, within ninety days from the posting of the notices on the claim, the locator must sink a discovery shaft to a designated depth, or in default thereof, the statute provides that he may, as an equivalent therefor, run a "cut or cross cut or tunnel" which cuts the lode at a depth of ten feet, or an open "cut along the ledge or lode equivalent in size to a shaft, four feet by six feet by ten feet deep . . ."

The statute contemplates the doing of one of five things. Sinking a discovery shaft upon the claim located to the depth of "at least ten feet from the lowest part of the rim of such shaft at the surface, or deeper if necessary, to show the lode deposit of mineral in place; or, a cut or cross cut or tunnel which cuts the lode at a depth of ten feet; or an open cut along the

“ledge or lode equivalent in size to a shaft four feet by six feet by ten feet deep . . .”

Appellants allege in their certificate that the “discovery shaft or its equivalent” is situated, etc. This is in the alternative, and it is not possible to gather from it whether there is a discovery shaft of the statutory dimensions, or cut, cross cut or a tunnel, any one of which cuts the lode at a depth of ten feet, or an open cut along the ledge or lode of the required depth.

The very essence of the statute is that there shall be certainty in these notices, and we submit that it is impossible to ascertain from the foregoing language what preliminary work was done.

Furthermore, the locator claims one thousand feet in a *southeasterly* direction from the *discovery shaft*. Taking this shaft as his initial point, he claims one thousand feet southeasterly therefrom and five hundred feet in a northwesterly direction. The certificate then recites that the “discovery shaft or its equivalent” is situated upon the claim eight hundred feet *south* from the north-end center of the claim.

This description creates an anomalous condition. Taking the initial point as the discovery shaft, and running the line southeasterly one thousand feet, establishes the south-end center. Then, again, starting from the discovery shaft, and running a line five hundred feet northwesterly, establishes the north-end center. He has now his boundaries established and his discovery shaft

at a fixed point. What then appears? Under the statute he is required to state the location of his discovery shaft, which he proceeds to do as follows:

“Such discovery shaft or its equivalent is situated “upon the claim *eight hundred feet south* from the “north-end center.” He has already shown that it is *five hundred feet south* of the north-end center, but by this statement he carries it three hundred feet south on the lode; and if we are to be controlled by the first statement, that he claims one thousand feet southeasterly from the discovery shaft, then he carries his southeast lines three hundred feet outside of the south-end line; while pursuing the same process of reasoning, if we take this latter location of the discovery shaft and run the course northwesterly three hundred feet therefrom, we are shy three hundred feet from the north-end center line. It will thus appear that the *same discovery shaft* appears at *two* different points on the claim at a distance of *three* hundred feet apart.

Practically the same conditions would exist were we to take the initial point as the “monument” referred to in one of these certificates. It will be remembered that Carr, one of the original locators, testified that he made the cut right alongside of his discovery monument (Record, p. 106). And Porter testified that he enlarged it in May, 1902 (Record, pp. 157-8), but not to the extent of making a new or re-location (Record, p. 160),

nor did he ever comply with the statute as to a new or amendatory location.

If we are to be controlled by the strict construction of the statute as maintained by counsel for appellants in regard to our certificate of location, they can have no reason to complain if we cite the cases quoted by them as sustaining their construction, notably the decision of the Supreme Court of the United States in the case of *Butte City Water Co. vs. Baker*, 196 U. S., 119, 128.

Under the rule laid down therein, we submit appellants have failed signally to comply with the Nevada Statutes, and their amended certificates are for that reason void.

Finally, and as conclusive upon the validity of these certificates, there has been an entire failure to comply with the provisions of the Nevada State Statute, Section 210, Subdivision 3. There is absolutely no reference therein to a "permanent monument" or a "natural object." We ask an examination of the certificates. We do not need to cite authorities to the point that such omission absolutely vitiates the location.

Second: Another point, and one we think which settles the vital question in this proceeding, is that the complainants have shown that their claimed discovery shaft or its equivalent is located upon patented land, to wit: on the land of the "Triangle" and the "Lucky Jim" lodes, two well-known patented claims, and the

patents to which were read in evidence by appellee. They show that the discovery shaft claimed by appellant was on patented ground. These patents are Defendants' Exhibits I and J (Record, pp. 560, 565).

This fact clearly appears from the plat, Exhibit E, attached to Complainants' Exhibit 7, page 514, being a copy of the adverse claim filed on behalf of the "Dave Lewis Hope," in the matter of the application for a patent for the "Ivanpah," and from the patents themselves. (A copy of which plat is attached hereto.)

It is well established that a locator must sink his discovery shaft upon vacant territory.

Lindley on Mines, Section 337.

And it has been held by the Supreme Court of the United States upon an application for a patent upon mining land, where it appeared in the proceedings to determine the adverse claim to the location, that that part of the location upon which the discovery shaft was situated was located upon a patented claim of a third party, that the whole location was defeated.

Gwillim vs. Donnellan, 115 U. S., 45.

The rule as laid down by the Supreme Court has been almost uniformly followed by the courts and by the Land Department; and where such appears to be the fact an application for a patent will be denied.

Lindley on Mines, Section 338.

Edw. Williams, 20 L. D., 458 (1895).

Winter Lode, 22 L. D., 302 (1896).

Appellants have evidently awakened to an appreciation of the significance of this fact. We would like to call the attention of the Court to Exhibit E, the plat herein referred to (Record, p. 514) in connection with the incorrect diagram attached to appellants' brief, which shows the said discovery shaft to be well outside the lines of the patented claims referred to, in direct contradiction of the plat or survey offered on the trial. We do this without further comment, but venture at the same time to ask the Court to examine the diagram attached to this brief, which is a copy of the one contained in the record.

If our contention is correct, the location of the appellants was void from the outset; they never did have a valid location even from its attempted inception, and the land alleged to be covered thereby was vacant public domain at the time appellee located.

Conceding all that counsel claim by the decision of the Supreme Court of the United States in the case of *Butte City Water Co. vs. Baker*, 196 U. S., 119, 128, relative to our original certificate of location of the "Ivanpah," we submit that all of these defects were remedied by our amended certificate of location, which was filed for record on August 11, 1902, in the office of the Recorder of Nye County, Nevada, and on August

20, 1902, in the office of the Tonopah Mining District Recorder (Record, pp. 538, 9, 40).

Such amended location certificate related back to the original location in the absence of valid intervening rights, and the record in this proceeding shows an entire absence of any such rights.

Lindley on Mines, Section 338.

And such amended certificate may be considered in connection with the said original certificate, even if the latter be deemed void.

Duncan vs. Fulton, 61 Pac., 246.

Strepy vs. Clark, 5 Pac., 111.

Where the right of possession is founded upon an alleged compliance with the law relating to a valid location, all the necessary steps therefor, aside from the making and recording of such certificate, must when contested be established by proof outside of such certificate.

Lindley on Mines, Section 392.

Strepy vs. Clark, 5 Pac., 111.

We submit that we have shown a substantial compliance with the statutory provisions of the United States and of the State of Nevada as to the necessary prerequisites thereof prior to the completion of the location by the recordation of the certificate of location, the final step therein. We have shown a discovery on Oc-

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tober 10, 1901 (Record, pp. 212, 213, 215); erection of monuments and boundaries marked (Record, pp. 219, 220); necessary preliminary work done within the time required, to wit: about December 1, 1901 (Record, pp. 216, 252); recordation of original certificate of location (Record, p. 228) and of amended certificate of location (Record, pp. 538, 539, 540), showing a complete compliance with the statute of the United States and of the State of Nevada. We have further shown that five hundred dollars' worth of work was done on the claim in June, 1902 (Record, p. 390), and since that time over \$70,000 had been expended thereon in development work up to the time of the trial (Record, p. 389).

In conclusion, we urge upon the Court that this is a case where there is a conflict of the evidence, five witnesses against seventeen, and the principal one of the five impeached by at least nine of the others; a case where the appellants have failed absolutely to locate their claim on the ground, and where their notices and certificates of location are absolutely lacking in the statutory requirements, while their amended certificate fixes their discovery shaft or equivalent in one place three hundred feet from the place where it is fixed in another part of the same certificate. In other words, the same shaft is in two places upon the alleged location, three hundred feet apart. From all points of view, the "Ivanpah's" amended certificate complied

with the Nevada Statute in all its technical requirements.

We trust that this Court will concur in the language of Judge Hawley in his opinion rendered in the Court below, and with the following quotation from the opinion, we respectfully submit this brief:

“I am clearly of the opinion that the decided weight
“ of the evidence shows that on the 10th day of October,
“ 1901, the ground then located by the “Ivanpah” was
“ vacant public mineral land, subject to location; that
“ the “Ivanpah” was a valid location; that the locators
“ and owners thereof have fully complied with the law,
“ and have the better right to the ground covered by
“ such location. . . . The defendant proved all the
“ necessary facts entitling it to a patent” (Record, pp.
52, 53).

Respectfully submitted,

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